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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 210.

FLORIDA LAUGHLIN, APPELLANT,

vs.

JOSEPH D. MITCHELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED NOVEMBER 16, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

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FLORIDA LAUGHLIN, APPELLANT,

vs.

JOSEPH D. MITCHELL.

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1 UNITED STATES OF AMERICA,
Southern District of Mississippi:

Pleas and proceedings had and done at a regular term of the circuit court of the United States for the southern district of Mississippi, begun and held pursuant to law in the court-room of said court, in the city of Jackson, in said district.

Present and presiding, the Honorable R. A. Hill, United States district judge for Mississippi.

FLORIDA LAUGHLIN
vs.
J. D. MITCHELL and JEFFERSON DAVIS & J. H. D. BOWMAR, Executors, &c., of Joseph E. Davis, Deceased.

Be it remembered that heretofore, to wit, on the 25th day of June, A. D. 1881, a bill of complaint was filed in the office of the clerk of said court in the words and figures following, to wit:

2 *Original Bill of Complaint.*

In the Circuit Court of the United States for the Southern District of Mississippi.

FLORIDA LAUGHLIN
vs.
JOSEPH D. MITCHELL and JEFFERSON DAVIS and JOSEPH H. D. BOWMAR, as Executors of Joseph E. Davis, Deceased.

To the honorable the judges of the circuit court of the United States for the southern district of Mississippi:

Your oratrix, Florida Laughlin, who is a citizen of the State of Tennessee, exhibits this her bill against Joseph D. Mitchell, who is a citizen of the State of Mississippi and a resident of Warren county, in said district, and against Jefferson Davis and Joseph H. D. Bowmar, as executors of the last will and testament of Joseph E. Davis, deceased, who are citizens of Mississippi and residents of said district.

And thereupon your oratrix doth complain and aver as follows:

That your oratrix is the owner of a certain plantation situate in the county of Warren and State of Mississippi known as
3 "Diamond Bend," and more particularly described as follows:

Lot- 1 and 2 in section 13, town. 14, range 2 east, containing together about 220 acres, and also parts of sections 12, 13, 14, and 15, town. 14, range 2 east.

As such owner your oratrix is in possession of said lands, and has so held the same for many years—from the time and under circumstances hereinafter more particularly stated.

Your oratrix is a daughter of Joseph E. Davis, deceased, and the defendant, Joseph D. Mitchell, is his grandson; that said Joseph E.

Davis departed this life in the year 1870, leaving a last will and testament, which was duly admitted to probate in the chancery court of Warren county, in the State of Mississippi, a copy of which is herewith filed as an exhibit, marked "A," and prayed to be taken as part hereof.

That by the first clause of said will said testator bequeathed and devised all of his estate, real and personal, to the defendant Mitchell and his sister, subject to legacies and bequests thereinafter made; that the second and third clauses of said will are as follows;

"2ndly. I give and devise to my daughter, Florida Laughlin, the estate known as the Diamond Place, in said county of Warren, containing about one thousand two hundred acres, for and dur-
4 ing her natural life, with full enjoyment of the profits and privileges thereunto belonging.

"3dly. I give and devise to my grandson, Jos. D. Mitchell, the plantation known as the Diamond Place, in the county of Warren, containing about one thousand two hundred acres, now in possession of and occupied by my said daughter, Florida Laughlin, who has a life estate therein, with appurtenances thereunto belonging, on the death of my said daughter, Florida Laughlin, to hold and enjoy the same in fee-simple; but in case my grandson, J. D. Mitchell, should not survive my daughter, Florida Laughlin, and should die without issue, I give and devise said Diamond Place to my nephew, Jos. E. Davis, son of Hugh R. Davis, of Wilkinson county, Mississippi."

That the defendant Mitchell, though fully cognizant of your oratrix'- rights in the premises as absolute owner in fee of said property, and notwithstanding the same, pretends that said devise to him was valid and is effectual to convey to him the fee in said lands.

Your oratrix further shows that her said father, Joseph E. Davis, became possessed of said property only through her and as her trustee, and never did acquire or own any beneficial interest therein. The circumstances under which said trust was assumed are as follows:

5 On the seventh day of June, 1844, your oratrix was the wife of David McCaleb, and she and her said husband were then living on said plantation, which was then their homestead and had been the property of her said husband before his intermarriage with your oratrix. On the 15th day of July, 1837, said David McCaleb, being indebted to Lambeth & Thompson, of the city of New Orleans, had executed a deed of trust to secure his indebtedness, which was recorded in the county of Warren, in book "K," page 125. This debt, or the balance due thereon, amounting to thirteen thousand nine hundred and fifty-five dollars and eighty cents ($13,955.80), had been assigned to one Charles A. Jacobs, and said David McCaleb and your oratrix executed a new deed of trust to secure the payment of said balance to said Charles A. Jacobs on the said seventh day of June, 1844, whereby they conveyed unto one John M. Chilton and one Charles J. Searles, as trustees, all of said land and in addition thereto some forty-two slaves and their increase before and since the date of the execution of the previous deed above mentioned and all their future increase and all the

horses, mules, cattle, hogs, and farming utensils and other personalty thereon. By said deed of trust terms were granted by which said McCaleb should be permitted to pay his said debt in four equal annual installments, with interest at eight per centum per
6 annum, a copy of which deed is herewith exhibited, marked Exhibit "B."

Your oratrix further shews unto your honors that on the seventh (7) day of May, 1846, said David McCaleb and your oratrix executed another deed of trust, whereby they conveyed the same real and personal property and some other slaves in addition to one Geo. W. McElrath, as trustee, to secure a debt due by said David McCaleb to Laughlin, Searles & Co., commission merchants, doing business in the city of New Orleans, which copartnership was composed of Wm. Laughlin, Charles J. Searles, and Edmund C. Laughlin, which latter is now the husband of your oratrix. The debts secured by said deed consisted of the accommodation indorsement of a draft drawn by said David McCaleb on, and accepted by, Wm. Laughlin & Co. for three thousand two hundred and one dollars and sixty-one cents ($3,201.61), dated March 23rd, 1846, and payable seven months after date, to wit, on the 26th of October, 1846, and also a promissory note of said McCaleb in favor of said Laughlin, Searles & Co., dated May 1st, 1846, and payable November 1st, the same year, for $1,000.00, a copy of which is exhibited herewith, marked Exhibit "C." In addition to these debts said McCaleb owed other large debts, which were pressing and which rendered his situation precarious, though said land, with its valuable improvements and the slaves and personal property, *were* rea-
7 sonably worth more than one hundred thousand dollars at that time.

Your oratrix further avers that the said John M. Chilton and Charles J. Searles, pursuant to the terms of their said deed of trust, advertised the property for sale at public outcry on the 15th day of June, 1846.

Before the appointed day the said David McCaleb had, without difficulty, procured the promise of assistance from several of his near kinsmen, who were men of large means and credit, and one Johnathan McCaleb, his uncle, who was much attached to his nephew, said David McCaleb, had promised to purchase said property at the sale and, taking title in his own name, give David McCaleb ample time and opportunity to work out of his debt and repay to him such amount as he should have to advance for the purpose of making the purchase. Accordingly said Johnathan McCaleb attended said sale amply prepared and fully determined to purchase said property, in trust, for the benefit of his said nephew. Your oratrix had, however, in the meantime solicited a similar assistance from her father, the said Joseph E. Davis, who had consented to make purchase for the same purpose and on like terms of trust to secure and hold the same that your oratrix and her said husband might be able in time to redeem the property, except that said Joseph E. Davis required that his purchase should be in trust for your
8 oratrix, his daughter, instead of David McCaleb. The latter

was brought to give his assent to this proposed arrangement on the suggestion that we would be more secure in our homestead and in a competent support if the title should become vested in your oratrix, as it would thus be secure from the reach of any creditors of him, the said David McCaleb. On the day of sale the said Joseph E. Davis and the said Johnathan McCaleb, attended by other of his kindred, arrived at the appointed place, each ready to carry out the arrangement which had been determined on, and it was not until after a consultation of considerable length and with protestation of reluctance on the part of Johnathan McCaleb that it was finally agreed that the purchase should be made by and in the name of Joseph E. Davis, to be held for and sold to your oratrix on payment of such sums, with the interest thereon, which said Joseph E. Davis might be required to pay or assume, instead of being bid in by and in the name of Johnathan McCaleb, to be redeemed in like manner by David McCaleb. But when this was agreed upon and said David McCaleb withdrew from his contemplated arrangement and refrained from bidding at the urgent solicitation of the said Joseph E. Davis, it was upon the thoroughly well understood agreement that the one arrangement was to be a substitute for the other,

each having been designed for the sole benefit, assistance, and
9 protection of your oratrix and her said husband to secure for them the only homestead which they had possessed since their marriage, and the trust so assumed by pledges to do for us what others were prevented from doing was at that time regarded by said David McCaleb and his kinsmen, as well as by said Joseph E. Davis, as imposing upon the latter obligations of the highest character, which were always fully recognized by him for several years and until the happening of the events to be hereinafter narrated.

Your oratrix further shews that so determined was the said Johnathan McCaleb to buy said plantation and personal property for the use of his said nephew that he bid more than any one else for some of the slaves, and it was evident to all present that he would become the highest bidder for all of said property but for the yielding of the said David McCaleb, who consented, as hereinbefore stated, with reluctance, to the purchase by Joseph E. Davis, and then the purchases which had been made by said Johnathan McCaleb were by consent of all transferred and reported as the bid of the said Joseph E. Davis.

Your oratrix further avers that it was made known at said sale to all who were present that said Joseph E. Davis was bidding for your oratrix, his daughter, and the wife of the owner of said property, and on that account no bidding was made by any dis-
10 interested persons, and, as a result, there was no substantial competition. It resulted that all of said property, real and personal, was knocked off to said Joseph E. Davis as the highest bidder at the sum of twenty-eight thousand five hundred and thirty-one dollars ($28,531.00), which was scarcely more than one-third of the value of said property.

Your oratrix further avers that the creditors who were entitled to

receive the proceeds of said sale were friendly to David McCaleb, and with the kindly purpose of facilitating the accomplishment of the designs of said Joseph E. Davis, in behalf of the wife of said David McCaleb, they consented that the purchase-money should not be required to be paid in cash, as had been required by the terms of sale, and which confronted other bidders as a necessity, but your oratrix was left in undisturbed possession of all the property without the payment of one dollar of cash, and her said father executed instead his own note to Charles A. Jacobs for the principal and interest of his debt, including even the trifling cost of advertisement and the charges of the commissioners for making the sale, the intention and object being that the said David McCaleb might be able to meet all such payments by the proceeds of the crops which the property was expected to produce under his cultivation for the benefit of his wife. The trustees who made said sale, John M. Chilton and Charles J. Searles, thereupon executed an
11 agreement between themselves, as parties of the first part, and Joseph E. Davis, as party of the second part, dated the day of said sale, whereby the purchase by said Joseph E. Davis was recited, and the price of the several articles set forth, aggregating the sum of twenty-eight thousand five hundred and thirty-one dollars ($28,531.00).

The claim of Jacobs was stated to be—

Principal	$13,732 00
Interest	579 38
Commissioner's fees	715 56
Advertisement fee	10 00
Total	$15,036 94
Leaving a balance of	$13,494 06

Said agreement recites that said Joseph E. Davis executed his note for said aggregate of $15,036.94, payable on the first day of December, 1846, at the Mechanics' and Traders' Bank of New Orleans, with interest thereon at eight per centum from date. But it was further agreed that upon payment of one-third of said note at maturity, viz., $5,012.31½, and of the interest then due and in arrear on the whole sum specified in the note, then the time for the payment of the residue should be extended to the first day of December, 1847, and then, upon payment of a like third of the residue of said sum of money in said note remaining unpaid, and all interest due thereon, the time of payment of the residue shall be extended till the first day of December, 1848, when the whole of the
12 residue and all interest accrued thereon shall be payable absolutely, and it was further agreed that the title to all said property should remain in said trustees until the final payment and discharge of said purchase-money, and that said trustees should then by an entry of such satisfaction and a transfer of title, either made on the margin of the record of said agreement or otherwise, vest the title of said property absolutely in said Joseph E. Davis.

But it was provided that if he should fail to make said payment that said agreements should be void and of no effect. It was further stipulated that the debt of Laughlin, Searles & Co., amounting to about $4,200.00, should be paid by said Joseph E. Davis, and the surplus to said David McCaleb, a copy of which agreement is exhibited herewith, marked Exhibit D.

Your oratrix further avers that after these arrangements had been consummated the said David McCaleb continued the cultivation of the crops and exercised every act of dominion over all the property in precisely the same exclusive manner as if the title had been vested absolutely and directly in your oratrix, instead of in Joseph E. Davis for her use, and the said Joseph E. Davis never did at any time during the lifetime of said David McCaleb exercise any sort of control, or pretend to have any sort of personal or beneficial interest therein. Not only was there no visible change in the
13 management and control of said property, but your oratrix avers that no account was kept, made, or demanded as to the rents, issues, and profits of said property, and the debts which had been assumed by Joseph E. Davis in the arrangement aforesaid were considered by said Joseph E. Davis and David McCaleb as debts of your oratrix, to be paid for her by her said husband, by means of said property, and were so treated by both of them. The said David McCaleb was a man of great dignity of character, sensitive, high-spirited, and self-reliant, and was quick to resent, in an aggressive manner, any infringement of his rights by others; and your oratrix, who well knew, and distinctly remembers, the circumstances which she has narrated, avers that it would have been a moral impossibility that the purchase of said Joseph E. Davis could have been made on his own account at such a price, and it would have been equally impossible, if it had been so made, that the said David McCaleb could have been induced to remain for a day a tenant at will and a pensioner on the bounty of another.

Your oratrix avers, on the contrary, that her said husband treated said property as the separate estate of your oratrix and shipped the crops during his lifetime, and applied the proceeds to the payment of the debts which had been assumed by said Joseph E. Davis, and of other incumbrances, and that he lived and died,
14 not only with the conviction that all of said property had been thus secured to his wife, but without any sort of thought or suspicion ever having been suggested or having arisen in his mind that any claim adverse to your oratrix could ever be set up by Joseph E. Davis or his heirs.

Your oratrix further avers that said David McCaleb died during the month of May, in the year 1847, and your oratrix shipped the crops of that year, as that of the preceding year had been shipped, to Wm. Laughlin and Co., to the credit of Diamond Place account, for the Charles Jacobs judgment. In July, 1848, your oratrix married Edmund C. Laughlin, her present husband, who was at that time a member of the firm of Wm. Laughlin & Co. aforesaid. Your oratrix fully informed her said husband, E. C. Laughlin, of the situation of her property and urged him to consent to live with

her on the estate instead of in New Orleans and aid and assist her in paying off her said debt, to which he finally assented. Your oratrix and her said husband continued to live on said plantation, shipping the crops as before, and applying the same, sometimes through their merchants and sometimes by direct payment to Joseph E. Davis, to the discharge of said indebtedness.

Some years after the marriage of your oratrix with the said Edmund C. Laughlin, and after she had paid a large portion of
15 all incumbrances, and some other indebtedness, which it became necessary to pay in the course of litigation, your oratrix requested her said father, Joseph E. Davis, to make a title to her and allow her to secure him in any balance for which she might be liable, and this request, and others of similar import suggesting different modes for the consummation of her wishes in that respect, were never complied with, but his failure to do so was never at any time accompanied or explained by advancing even the slightest claim of beneficial interest in himself. The request of your oratrix was disposed of variously, sometimes evasively, and sometimes by a counter-suggestion, but your oratrix doth aver that in no instance, either by letter or in personal interviews, did he at any time (except as hereinafter set out) justify or explain his failure to convey title to your oratrix by pretending to own or claim for himself any interest in her said property; on the contrary, on such occasions he discussed the question always as one of prudential consideration, importing by his words and reasons a full admission of the absolute ownership of your oratrix, and suggesting that it was more prudent that he should retain the title of the property for your oratrix, the better to keep it separate from the property of her husband, and at the same time distinctly disclaiming any interest therein for himself.

16 Your oratrix avers that her ownership of said property was repeatedly thus admitted on such occasions by said Joseph E. Davis, both orally and in writing in letters addressed to her and subscribed by him.

Your oratrix further avers that on more than one occasion when she had suggested the danger which she incurred and the want of security which she had felt in permitting the title of her property to be held in his name he responded and declared to her that to guard against any accidental trouble which might arise from that circumstance he had devised said property to her, your oratrix, in and by his will which he had prepared and executed, which declaration was made to her for the purpose of inducing her consent to permit him to retain the title of said property, and which declaration she has no doubt was true when made, and your oratrix unwillingly permitted the continuance of said trust and continuously occupied said plantation as a homestead and made payments annually until before the year 1858 she had more than repaid the said the Joseph E. Davis all money and debts paid out and assumed by him for her own account of said property.

Your oratrix further avers that on the 27th day of December, 1858, he had conceived the purpose of securing the ownership of said property to himself and of converting the title which he had

held in trust for your oratrix into an indefeasible and beneficial title contrary to all of his previous declarations and assur-
17 ances. Whether this determination was arrived at by the evil advice and influence of others interested or by a desire to consummate certain plans of his own your oratrix does not know.

Your oratrix does not in the least question the purity of motive which actuated her said father in assuming this trust, to the exclusion of said Jonathan McCaleb, but she accords to him that integrity of purpose in entering upon said trust which was dictated alike by good conscience and parental affection; but his subsequent defection, as explained by his own words, hereinafter stated, based upon the belief on his part that the life estate which he substituted or has sought to substitute as a provision for your oratrix would be of equal benefit to her is explicable to those only who knew or can be brought to understand the extraordinary characteristics of mind which dictated his most arbitrary actions in his dealings with and for those whom he regarded as members of his family and whom he perhaps intended to make objects of his bounty.

Your oratrix had been twice married and remained yet childless, and that fact, she believes, brought her said father to the desire and led him eventually to reconcile it to his own conscience to repudiate the rights and just claims of your oratrix, and to seek by the means which she is now about to narrate to acquire said property,
18 that he might be able to dispose of it by will to his own heirs or devisees instead of permitting your oratrix to dispose of it by will or otherwise, or instead of allowing it to descend to her heirs.

Be this as it may, your oratrix avers that such had become his purpose and he compassed it, or attempted to do so, under the following circumstances and in the following manner:

On the 27th day of December, 1858, when the said Joseph E. Davis was just beginning to recover from a dangerous illness, and while he was still so feeble and nervous that his family were still very anxious about him [and] careful to avoid everything that could agitate or excite him, he, the said Joseph E. Davis, said to your oratrix, Florida, who was then in attendance upon her father, the said Joseph E. Davis, that he would like for her husband, Edmund C. Laughlin, to be sent for, who was then at his own home, on said Diamond Place, several miles away, which was accordingly done. When he arrived he and your oratrix were called into the office of said Joseph E. Davis and a paper was put into the hands of your oratrix, which he desired her to read aloud, without having given any explanation as to its contents or purport. When your oratrix had read it, both she and her said husband were astonished to find it a lease to be signed by your oratrix and her husband and the said Davis, in which the said Davis leased the Diamond Place and
19 the slaves so purchased by him as aforesaid unto your oratrix, Florida Laughlin, for life, and said lease also contained an acknowledgment that the sole, legal, and equitable title in and to said plantation and slaves and other property was in said Joseph E. Davis; all of which will appear by reference to a copy of said deed hereto

appended and marked Exhibit "E," and prayed to be made a part of this bill.

Your oratrix shows further unto your honors that upon reading said deed and becoming aware of its contents your oratrix was so astonished that she could not speak for awhile, but at length said "that it seemed to allow her but a life interest in her own home;" to which the said Joseph E. Davis replied, "I think it the best way of securing your interests." Your oratrix replied that she could not see how that could be, adding that Lise Mitchell and Joseph D. Mitchell, the defendant, whom the said Joseph E. Davis had adopted, was surely sufficiently provided for by giving them the plantation which he had given to their mother on Bayou Louisiana, which was as valuable as Diamond Place, and besides he still had "Hurricane," the plantation on which he then lived, to be divided between them. To this the said Joseph E. Davis replied "that they, Lise and Joseph D. Mitchell, might not like to dispossess their father." Your oratrix replied neither would I like to dispossess my husband." "That is it," replied the said Joseph E. Davis; "the place would go to strangers." Again your oratrix remonstrated with the said Davis, her father, and reminded him that when the place was sold at the trustee's sale he had, at her earnest request, bought it in, and that this had been done only with consent of Mr. Jonathan McCaleb, who anxiously desired that it should not go out of his family, and that he, the said Joseph E. Davis, had promised her, in the presence of the said Jonathan McCaleb, that as soon as the debt which he had assumed, or would have to assume, was paid to him he would make her a fee-simple title to the place, and that, notwithstanding all he had ever paid out on the place had been repaid to him, he now wished her to take only a life estate in her own home, which she had thus bought and paid for; and his only reply was, "I think it best for you."

He, the said Joseph E. Davis, then requested your oratrix and her husband, the said Edmund C. Laughlin, to walk over to his library, some distance from the house where they then were, and sign said deed; and your oratrix then replied, "Papa, I beg you not to urge me to this injustice to myself; I cannot do what you ask;" and the said Joseph E. Davis then took her by the arm and, in his eagerness and anxiety to have said deed signed, almost forced her to the office through a heavy rain and in his slippers and dressing-gown and without his hat.

21 Your oratrix further shews unto your honors that she, the said Florida Laughlin, seeing the nervous and excited condition of her father, and fearing disastrous consequences to him in his then feeble state of health if she should any longer oppose him, under this compulsion then and there signed said deed.

Your oratrix shows further unto your honors that she, the said Florida Laughlin, and her husband afterwards acknowledged said deed, as appears by reference to said deed, on the first day of May, 1859, and that said acknowledgment was extorted and forced out of them by threats on the part of said Joseph E. Davis if they did not acknowledge it to take possession of the place and put an over-

seer on it, and leave to your oratrix the bare occupancy of the house and garden, with no other provision.

Your oratrix further shews unto your honors that from the time she was induced by her said father to sign said written acknowledgment up to the time of his death, on all occasions on which it seemed proper for her to speak, she expressed to him, both in letters and personal interviews, her sense of the injustice which had been done to her. Immediately after she had signed said writing, on returning to the house, her stepmother, the wife of said Joseph E.
Davis, who had always been an affectionate mother to your
22 oratrix, and who did not approve the course pursued by her
said husband, and who was at the moment engaged in conversation with another, looked around, and on seeing your oratrix in tears exclaimed, "I hope you have not been doing something you ought not to have done," and your oratrix replied, "I have done what I was compelled to do." She, your oratrix, immediately ordered her carriage and was about to depart, though it was still raining, and her father coming in at the moment, remonstrated and insisted that she should remain, but your oratrix said to him, "I am going, sir, and shall never return to this house," and she did leave at once and never did return.

Your oratrix further shews that after she had signed said deed she had always supposed that by that act she had finally and hopelessly lost her property, and whatsoever she has said or done or omitted to do since was under that belief. With a full knowledge of the feeling of your oratrix and her husband, her said father suggested to Mr. Laughlin, the husband of your oratrix, that he should purchase said property from him. Your oratrix and her said husband were much pleased at the suggestion, because they at once entertained the hope, from the manner and occasion of the suggestion, that it was his intention at last to do justice by making
a conveyance by a sale for a nominal price, or at least on such
23 reasonable terms as might be justly expected under the circumstances; but said Joseph E. Davis elicited by his suggestion a letter asking the terms on which he would sell, and replied that he would take fifty dollars per acre, which would make the price aggregate ($60,000) sixty thousand dollars. This was in 1869, and included nothing but the bare land and tenements, when the market value of such lands was trifling compared to their value at the time when he was permitted to purchase the same lands, together with fifty slaves and their increase for eleven years before for ($28,000) twenty-eight thousand dollars.

Your oratrix does not know what influenced the said Joseph E. Davis to elicit, by his own suggestion, an expression of willingness on the part of your oratrix and her husband to make said proposed purchase and to ask for his terms, and then to fix the price at such sum as to render such purchase impossible; but in his letter on the subject, dated January 25th, 1869, he states: "In my suggestion to Mr. Laughlin I was influenced by the consideration that, in the course of nature, my life was drawing to a close, and the pro-

priety of leaving all the affairs of this life so arranged as to have no difficulty with others in settling my affairs after I was gone."

Your oratrix further avers that the Joseph E. Davis, son
24 of Hugh R. Davis, to whom said property was devised in said will in case said Joseph D. Mitchell should not survive your oratrix, and should die without issue, has departed this life; and she further shews that Jefferson Davis and Joseph H. D. Bowman are the executors of the last will and testament of said Joseph E. Davis, deceased, and reside in this judicial district.

To the end, therefore, that said defendants may, if they can, shew why your oratrix should not have the relief hereby prayed, and that the lease or instrument in writing whereby your oratrix conveyed her said property to Joseph E. Davis, or acknowledged that the right thereof was in him, be adjudged void and of no effect as against your oratrix, and that the devise of said property in and by said will to the defendant, Joseph D. Mitchell, be decreed to be void, and that the beneficial ownership and title to said property be decreed, as against said Joseph E. Davis, deceased, and his devisees, to be in your oratrix;

And that an account may be taken of the payments which were made by and for your oratrix in the premises, that it may be ascertained whether or not she has, in fact, paid to said Joseph E. Davis the full amount which she was bound to pay to entitle her to the relief hereby prayed, as she has hereinbefore alleged, your oratrix being willing and hereby offering to pay any balance
25 which may be found against her on such accounting to the parties entitled thereto.

And that upon the ascertainment that your oratrix has fully paid all such sums as in equity she ought to have paid on or upon her payment thereof, now that she may be decreed to have the absolute, indefeasible title of said property as against said defendant.

And that if your oratrix hath, in any respect, mistaken her appropriate relief, or hath failed to ask for the same, that she may have such other and further relief as the facts shall warrant, and may seem just and equitable.

May it please your honors to grant unto your oratrix writs of subpœna, to be directed to the said J. D. Mitchell, and to the said Jefferson Davis and Joseph H. D. Bowman, as executors of the said Joseph E. Davis, deceased, commanding them, and each of them, personally to be and appear before this honorable court, at a time to be therein stated, according to the rules of this honorable court, then and there to answer the premises, and further to abide and perform such further orders or decrees in the premises as may seem meet and just.

And your oratrix will ever pray, &c., &c.

PITTMAN, PITTMAN & SMITH,
Solicitors for Compl't.

26 Personally appeared before me this — day of ——, 1881, Florida Laughlin, who, having been by me first duly sworn, doth depose and say that the allegations set forth in the foregoing

bill of complaint are true according to the best of her knowledge, information, and belief.

Filed June 25th, 1881.

J. M. McKEE, *Clk.*

27 Exhibit "A," filed with said bill of complaint, is in the words and figures following, to wit:

EXHIBIT "A."

Be it known that I, Joseph Emory Davis, of the State of Mississippi, county of Warren, now in my 85th year, do make this my last will and testament:

1st. I give, bequeath, and devise to my two grandchildren, Joseph D. Mitchell and Mary Elizabeth Mitchell, all the estate, real, personal, and mixed, as well as all rights and credits [of] which I may die seized or possessed, subject to the legacies and bequests hereinafter mentioned, to be controlled by my executors in manner hereafter directed.

2nd. I give and devise to my daughter, Florida Laughlin, the estate known as the Diamond Place, in said county of Warren, containing about one thousand two hundred acres, for and during her natural life, with full enjoyment of the profits and privileges thereunto belonging.

3dly. I give and devise to my grandson, Jos. D. Mitchell, the plantation known as the Diamond Place, in the county of Warren, containing about one thousand two hundred acres, now in possession of and occupied by my said daughter, Florida Laughlin, who has a life estate therein, with appurtenances thereunto belonging, on the death of my said daughter, Florida Laughlin,
28 to hold and enjoy the same in fee-simple; but in case my grandson, J. D. Mitchell, should not survive my daughter, Florida Laughlin, and should die without issue, I give and devise said Diamond Place to my nephew, Jos. E. Davis, son of Hugh R. Davis, of Wilkinson county, Mississippi.

4thly. I give and devise to my daughter, Caroline Leonard, the tract of land in the parish of Madison, State of Louisiana, containing about 1,100 acres, to have and to hold the same in fee-simple, with the right to dispose of the same as she may see fit. And, further, I desire my executors, hereinafter appointed, to pay her from the proceeds of the property sold, as hereafter directed, or from the debts collected, one thousand dollars annually during her life.

5thly. It is my will and desire, and I so direct my executors, out of the money due for the sale of the Hurricane and Briarfield plantations, amounting to three hundred thousand ($300,000) dollars, secured by the joint obligations of Benjamin T. Montgomery, Wm. Thornton Montgomery, and Isaiah Montgomery, payable on the 1st day of Jan., 1876, and bearing date of the 19th day of November,

A. D. 1866, and secured by mortgage on the land sold, of even date with the said bond, and also their joint and several obligations for the payment of six per cent. interest annually, payable in the gold coin of the United States from the 1st day of Jan., 1868, for 8
29 years following, or the maturing or falling due of the said bond for $300,000. It is my will and desire that my executors set apart and secure to my granddaughter, Mary Elizabeth Mitchell, the sum of $100,000, and to my grandson, Jos. D. Mitchell, the sum of $50,000; to Margaret Davis, Jefferson Davis, William Davis, and Parina Davis, children of my brother, Jefferson Davis, $20,000 each, and until the said sum become due and payable they shall be entitled to receive interest at the rate of six per cent. per annum, as secured by the said interest obligations; and it is further my will and desire that the money which shall accrue to and become payable to my granddaughter, Mary Elizabeth Mitchell, and to my grandson, Joseph D. Mitchell, shall be vested in some safe stocks, or so much thereof as in the opinion of my executors shall be advisable or necessary, but not to be less than one-half, and to be held in trust for them by my executors, the interest only to be paid to them for the space of 20 years; that my executors be empowered to remove such stock when in their opinion it is unsafe or unproductive and to invest the same in some more safe institution.

I further desire my executors to pay the interest on the sum bequeathed to my neices, Margaret and Parina Davis, and my nephews, Jefferson & William Davis, to their duly constituted
30 guardians until they severally become of age, when they will be entitled to receive the full amount of the sum bequeathed to them.

It is my will and desire that my executors shall extend a liberal indulgence to B. S. Montgomery, Wm. Thornton Montgomery, & Isaiah Montgomery (or the survivors), the purchasers of the Hurricane & Briarfield plantations, by extending the time for the payment so long as they pay the interest thereon or show a disposition to act fairly, by making proper exertions to meet their engagements, or to remit such portions of the interest as in their judgments may appear proper (but not exceeding one-half), and that the legacies hereinafter directed to be paid from the proceeds of such sale shall be a lien on and held by such legatees, with all the rights and privileges of the mortgagees.

It is my will and I do direct my executors that B. S. Montgomery is credited with ($200) two hundred dollars annually for the benefit of the aged and infirm on the plantations.

It is my desire and I hereby authorize my executors to compromise any of the said debts that may be due me, and to sell any lands of which I may die seized or possessed, particularly a tract of land in Claiborne county, near Grand Gulf landing, Washington county, Miss., conveyed to James & Arthur Rucks, and for which I hold their notes for about $42,000, and to make any compro-
31 mise they may think fit; a joint interest in lands on Cash river and White river, in Monroe, Jackson, & Woodruff counties, State of Arkansas, amounting to near (12,000) twelve thousand

acres; a small tract of land on Wash lake, Warren county, containing 318 acres.

It is further my will and desire that my executors pay from the proceeds of the sale of land or collection of debts the following legacies, to wit: To my sisters—Anna Smith, $2,000; Amanda Bradford, $2,000; Lucinda Stamps, $2,000. To my nieces—Lucy Boyle, $1,000; Lucy Mitchell, $1,000; Mary M. Davis, $1,000; Lucy and Mary, daughters of my nephew, Isaac Stamps, $1,000 each. To Mrs. Martha Harris, $1,000. To my nephews—J. Davis Broadhead, $1,000; Jos. E. Davis, $1,000; Jos. Davis Smith, Jr., $1,000; Robt. Anderson, $1,000; Alex. T. Mitchell, $1,000.

I hereby devise and bequeath to my two grandchildren, Jos. D. Mitchell and Mary Elizabeth Mitchell, all the rest and residue of my estate, wherever situated, which shall remain after the devises and bequests herein mentioned.

In case of a failure to collect the whole amount of the funds set apart for the payment of the legacies to my grandson, Jos. D. Mitchell, and my granddaughter, Mary Elizabeth Mitchell, my nieces, Margaret & Parina Davis, and my nephews, Jefferson & Wm.
32 Davis, I desire that my executors shall make a *pro rata* deduction from their several legacies.

In the payment of the smallest legacies I desire my executors not to interfere with the fund arising from the sale of the Hurricane & Briarfield plantations, which were set apart for the legacies to my grandson, Joseph D. Mitchell; my granddaughter, Mary Elizabeth Mitchell; my neices, Margaret & Parina Davis, and my nephews, Jefferson & William Davis.

I further give to my granddaughter, Mary E. Mitchell, my carriage & carriage mules and my gold watch, and direct that the amount of ready money I may leave be divided between my two grandchildren, J. D. Mitchell & M. E. Mitchell, who will defray my burial expenses.

I bequeath to my faithful servant, Jack Railey, $100, and recommend to my granddaughter, M. E. Mitchell, to keep him in her service at a salary of $250 as long as it is satisfactory for her to do so.

I further direct that all acts of my executors shall require a concurrence of a majority of those who qualify to render such acts valid.

I hereby appoint my brother, Jefferson Davis, of Warren county, Miss.; J. H. D. Bowmar, of Vicksburg, Miss.; Hugh R. Davis, of Wilkinson county, Miss.; Jas. D. Smith, of Louisiana, executors of
33 this my last will and testament, and direct the court shall not require them to give security on their qualifying as such.

In testimony whereof I have hereunto set my hand and seal, this 18th day of March, in the year of our Lord one thousand eight hundred and sixty-nine.

J. E. DAVIS. [SEAL.]

Subscribed and acknowledged by the testator in our presence, and at the time of such acknowledgment and subscription declared by him to be his last will and testament, whereupon we, at his request

and in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

B. R. THOMAS,
J. A. KLEIN,
GEO. M. KLEIN.

STATE OF MISSISSIPPI, *Warren County,* } *To wit:*

I, Alexander H. Arthur, clerk of the chancery court of said county, do hereby certify that the foregoing is a true copy of the last will and testament of Col. Joseph E. Davis, late of said county, deceased, proved and admitted to record in said court on the 21st day of September, A. D. 1870.

Given under my hand and official seal this 12th day of October, A. D. 1870.

A. H. ARTHUR, *Clk.*

Filed July 2, 1881.

J. M. McKEE, *Clk.*

34 Exhibit "B," filed with said bill of complaint, is in the words and figures following, to wit:

EXHIBIT "B."

Deed [of] Trust. David McCaleb, Jr., to John M. Chilton and Charles J. Searles.

This indenture, made and entered into this seventh day of June, A. D. eighteen hundred & forty-four, between David McCaleb & Florida McCaleb, his wife, of the county of Warren & State of Mississippi, of the first part; John M. Chilton & Charles J. Searles, of the said county & State of the second part, and Charles A. Jacobs, of the city of New Orleans & State of Louisiana, of the third & last part, witnesseth: That whereas the said McCaleb on the 15th day of July, 1837, being largely indebted to Lambeth & Thompson, of s[ai]d city of New Orleans, did execute a certain deed of trust bearing date the day & year last aforesaid, & duly recorded in the county of Warren in book K, pages 125, 126, to secure to said Lambeth & Thompson the sum of money therein described, which said deed of trust is here expressly refer-ed to & made a part and parcel of this indenture; and whereas the said Lambeth & Thompson have for value received by them assigned said deed of trust & the note

35 therein described, so far as the same remain unpaid, to the said Charles A. Jacobs, who is willing to extend to said McCaleb, in consideration of the provisions of this indenture, the time of payment of said debt; and whereas the balance of said debt at the date of this indenture due and unpaid amounts to the sum of thirteen thousand nine hundred & fifty-five $\frac{80}{100}$ dollars: Now, therefore, in order more effectually to secure said debt, as well as to perpetuate & keep alive the security heretofore created by the deed of trust aforesaid, & also to extend to said McCaleb the time of payment as above mentioned, the said McCaleb has this day

executed his promissory note, bearing date the 28th day of May, 1844, & payable to said Charles A. Jacobs on or before the first day of February, A. D. eighteen hundred & forty-five, at the Mechanics' & Traders' Bank at New Orleans, with 8 per cent. interest from 1st April, 1844, for [the] sum of thirteen thousand nine hundred & fifty-five $\frac{80}{100}$ dollars, and the said McCaleb & wife have also bargained & sold to the said John M. Chilton & Charles J. Searles as trustees, & do hereby grant & bargain & sell, alien, & convey unto them, the said trustees, all that certain tract of land lying in the county of Warren, & described in the deed of trust, bearing date July 15th, 1837, aforesaid as follows, to wit: lot number 2 in section 13, & lot number one in section 13, in township 14, range 2 east, containing together about 220 acres; also the tract of land at present possessed by said McCaleb, & adjoining the two lots of
36 land above described, containing about 1,000 acres, being the same land heretofore purchased by David McCaleb, & by him conveyed to David McCaleb, Jr., by deeds of conveyance duly recorded in the office of the clerk of probate of Warren county, & here expressly referred to for greater certainty & moreover known and described as parts of sections 12, 13, 14, & 15, in township 14, range 2 east; also the following slaves, to wit:

Nos. 1. Joe, aged 39 years.
2. Mary Jane, aged 19 years.
3. Amelia, " 18 "
4. Austin, " 39 "
5. Sylvia, " 34 "
6. Priscilla, " 16 "
7. Ben., " 13 "
8. Betsy, " 10 "
9. Alice, " 10 "
10. Tom., " 32 "
11. John, " 28 "
12. Jacob, " 26 "
13. Seymour, " 26 "
14. Cupid, " 25 "
15. Will., " 67 "

Nos. 16. Bailey, aged 57 years.
17. Amig, " 18 "
18. ——, " 42 "
19. Esther, " 17 "
20. Caroline, aged 15 years.
21. Field, " 19 "
37 22. Betsy, " 11 years.
23. Rhody, " 35 years.
24. Priscilla, " 15 "
25. ——, " 9 "
26. Maria, " 42 "
27. Sally, " 22 "
28. Rose, " 21 "

Nos. 29. Elish, aged 17 years.
30. Anthony, aged 9 years.
31. Vina, " 40 "
32. Caroline, " 25 "
33. Jack, " 19 "
34. Elizabeth, " 14 "
35. Noel, " 8 "
36. Hannah, " 57 "
37. Eliza, " 25 "
38. Mahala, " 25 "
39. Polly, " 24 "
40. Mary Jane, " 24 "
41. Judy, " 17 "
42. Winney, " 25 "

Also all the increase of said negro slaves both before and since the said 15th July, 1837, & all their future increase; also all the horses & mules, cattle, hogs, farming utensils, & other property attached to and belonging to the said plantation & negroes & necessary for the culture and maintainance thereof. To have and to hold all the aforesaid property, real & personal, unto the said John
38 M. Chilton and Charles J. Searles, their heirs and assigns, forever; and the said parties of the first part, for themselves, their heirs, &c., unto them, the said parties of the second part, do hereby covenant forever to warrant & defend the same against all claims, encumbrances to or on the said land and negroes of whatsoever kind. Nevertheless this deed is executed on the following conditions, to wit, the said David McCaleb shall hold possession and receive the revenues of said property until default be made by him in the manner hereinafter described, but he shall not remove any of said slaves from the county of Warren aforesaid (except temporarily such menials or body servants as may be necessary to himself & family). It is also covenanted that if the said David McCaleb shall pay punctually at maturity of the note above-described the sum of three thousand four hundred and eighty-eight $\frac{95}{100}$ dollars & all interest then due thereon, then & in that event the said Jacobs agrees & hereby empowers the said trustees to extend the time of payment of the residue of said note til- the first day of February, A. D. 1846, & if on the said first day of February, A. D. 1846, the said McCaleb shall punctually pay to said Jacobs the further sum of three thousand four hundred & fifty-five $\frac{80}{100}$ dollars & all interest then due & in arrears at the rate of eight per cent. per annum (being less than the rate of conventional interest allowed by the laws of Louisiana when said note is payable & which the said McCaleb hereby adopted & refers to as part of this agree-
39 ment and the law of this contract) from the maturity of said note, then the time of payment shall be extended (as to the residue) til- the first day of February, 1847, and then on the like punctual payment of a like instalment (being $3,488.95 and all interest due and in arrear- thereon the time of payment of the residue shall be extended until the first day of February, A. D. 1848, when

the remaining fourth, $3,488.95, and all interest, shall be punctually paid by the said McCaleb without further extension or forbearance; but if the said McCaleb shall make default or fail to pay punctually at the maturity of said note the same then to be paid as above specified, or shall afterwards fail to pay punctually at the terms above specified, the instalment & interest at every and each of said periods due and unpaid, then the said trustees are hereby empowered and required to proceed forthwith to the execution of this trust, and by a sale of the trust property cause all of said debt, or so much thereof as may not have been previously paid, to be fully paid and satisfied, and to that end the said trustees, or either of them, are required upon default as aforesaid, & at the request of said Jacobs or any holder of said note, to expose all of said property, or so much thereof as may be necessary to the payment of all arrearages hereby secured, to the highest bidder, at public sale, for cash, having first advertised the time & place of said sale, to be fixed according to the direction of said trustees; provided the sale be not thereby postponed longer than 90 days after such request to sell, in some weekly newspaper published in the town of Vicksburg for the space of 30 days prior to said sale, and then, out of the proceeds of such sale, first to deduct all costs attending the execution of this trust and to apply so much of the residue as may be necessary and sufficient to the full payment and discharge of said debt to the said Jacobs, or of so much as may remain due, & all interest thereon at the rate of 8 per cent. aforesaid, & refund the surplus, if any, to the said McCaleb; and it is expressly covenanted that by joining in this deed said Florida McCabe declares her intention to relinquish in favor of said Jacobs as well her right of dower in the premises as all other interest therein; it is also covenanted and agreed that in case of said McCaleb's default as above mentioned the said trustees are hereby empowered & required to take possession immediately of said property & to deliver possession of so much thereof as may by them be sold to the purchaser thereof; and this power shall be exercised by them separately as well as jointly.

In testimony whereof the said David McCaleb & his wife & the said trustee, & the said Charles A. Jacobs have hereunto set their hands & seals this 28th day of May, 1844.

D. McCALEB, Jr. [SEAL.]
F. McCALEB. [SEAL.]
JNO. M. CHILTON. [SEAL.]
CHAS. J. SEARLES. [SEAL.]
CHARLES A. JACOBS, [SEAL.]
By J. M. CHILTON,
His Ag't & Att'y-in-fact,
as per power of attorney duly recorded herewith.

Erasure on first page of part of line 26 & substitution of fifty-five $\frac{80}{100}$; also interlineation of words & figures between 12th & 13th lines of 1st page; also erased in 2d line of 2d page & substitution of words fifty-two $\frac{80}{100}$; also interlineation be-

tween 1st & 2d lines of 4th page & between 12th & 13th lines of 4th page, & erasure in 22d line & erasure in 23d line & substitution of figures $3,488.95, & interlineation between 23 & 24th lines of 4th page, done & approved before signing.

D. McCALEB, Jr.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me, the undersigned, Samuel B. Harwood, justice of the peace of said county, David McCaleb, Jr., and acknowledged that he signed, sealed, & delivered the foregoing deed of trust as his voluntary act and deed, on the day & year therein specified & for the purposes therein set forth; also personally appeared before me, the undersigned, justice as aforesaid, Florida McCaleb, wife of said David McCaleb, who, having been first privately examined by me apart from her said husband, acknowledged that she signed, sealed, and delivered the said deed of trust as her voluntary act and deed, on the day & year, & for the purpose therein declared & set forth, & without any fear, threat, or compulsion of her said husband.

42 Given under my hand & seal this seventh day of June, 1844.

SAM. B. HARWOOD, *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before the undersigned, Sam. B. Harwood, a justice of the peace in and for said county, John M. Chilton and Charles J. Searles, who severally acknowledged that they signed, sealed, and delivered the foregoing deed as their act and deed, on the day and year therein specified and for the purposes therein set forth.

Given under my hand and seal this 7th day of June, 1844.

SAM'L B. HARWOOD, *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI, *Warren County:*

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify that the foregoing deed of trust and certificate were filed for record in my office on the 21st day of June, A. D. 1844. Whereupon I have made the same of record in book T, pages 49, 50, 51, & 52.

Given under my hand & seal of office this 29th day of June, A. D. 1844.

[SEAL.] A. H. ROWLETT, *Clerk.*

43 STATE OF MISSISSIPPI, *Warren County:*

I, George T. Hardy, clerk of the chancery court in and for the county and State aforesaid, hereby certify that the foregoing 9 pages contain a true and correct copy of deed of trust from David McCaleb, Jr., to John M. Chilton and Charles J. Searles, trustees for Charles A. Jacobs, as the same appears of record and on file in my said office in deed-book T, pages 49, 50, 51, & 52.

Witness my hand and seal of said court this 1st day of July, A. D. 1880.

[SEAL.] GEO. T. HARDY, *Clerk*,
By WM. M. FOSTER, *D. C.*

Filed July 2, 1881.

J. M. McKEE, *Clk.*

44 Exhibit "C," filed with said bill of complaint, is in the words and figures following, to wit:

EXHIBIT "C."

This indenture made and entered into this seventh day of May, in the year of our Lord one thousand eight hundred and forty-six, between David McCaleb, junior, and Florida McCaleb, his wife, of Warren county, State of Mississippi, of the first part, George W. McElrath, of the said county and State, of the second part, and William Laughlin, and Charles J. Searles, of the county and State aforesaid, and Edmund C. Laughlin, of the city of New Orleans and State of Louisiana, merchants and partners under the name and style [of] Laughlin, Searles & Co., of the third and last part:— Whereas the said Laughlin, Searles & Co. have endorsed a certain draft drawn by the said David McCaleb, junior, on William Laughlin & Company, and accepted by them, bearing date the twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-six, payable seven months after the date thereof, to wit, on the twenty-sixth day of October, in the year eighteen hundred and forty-six, for the sum of three thousand two hundred and one dollars and sixty-one cents; and whereas also the
45 said David McCaleb, junior, is indebted to the said Laughlin, Searles and Company in the sum of one thousand dollars, evidenced by the note of the said David McCaleb, junior, in favor of the said Laughlin, Searles & Company, bearing date the first day of May, in the year eighteen hundred and forty-six, and payable on the fifteenth day of November, in the year aforesaid, at the Bank of Louisiana, in the city of New Orleans; and whereas, the said David McCaleb, junior, is desirous to save harmless and indemnify the said Laughlin, Searles and Company any loss or damage they may sustain by the endorsement of the draft aforesaid, and also to secure the punctual payment of the said note for one thousand dollars: Now, this indenture witnesseth: That the said parties of the first part, for, and in consideration of the premises, and the further consideration of ten dollars, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, and convey, unto the said party of the second part, his heirs, executors, administrators, and assigns, forever, all that certain tract or parcel of land lying in the county of Warren and State of Mississippi, known and described as follows, to wit: Lot number two, in section

thirteen, and lot number one, in section thirteen, all in township fourteen, range two east, containing together about two hundred and twenty acres; also the tract of land at present
46 possessed by said McCaleb and adjoining the two lots of land above described, containing about one thousand acres, being the same land heretofore purchased by David McCaleb and by him conveyed to David McCaleb, junior, by deed of conveyance duly recorded in the office of the probate clerk of Warren county and here expressly refer-ed to for greater certainty, and, moreover, known and described as parts of sections twelve, thirteen, fourteen, and fifteen, in township fourteen, range two east; also the following-described negro slaves, to wit: Joe, aged thirty-nine years; Mary Jane, aged twenty-one years; Amelia, aged twenty years; Austin, aged forty-one years; Sylvia, aged thirty-six years; Priscilla, aged eighteen years; Ben., aged fifteen years; Betsy, aged twelve years; Alice, aged twelve years; Tom, aged thirty-four years; John, aged thirty years; Jacob, aged twenty-eight years; Cupid, aged twenty-nine years; Will, aged sixty-nine years; Baily, aged fifty-nine years; George, aged forty-four years; Esther, aged nineteen years; Caroline, aged seventeen years; Field, aged twenty-one years; Betsy, aged thirteen years; Rhody, aged thirty-seven years; Priscilla, age seventeen years; Thad., aged eleven years; Mariah, aged forty-four years; Lilly, aged twenty-four years; Ben., aged twenty-three years; Henry, aged seven years; Eliza, aged nineteen years; Anthony, aged eleven years; Vina, aged forty-two years; Caroline, aged twenty-seven years; Jack, aged twenty-one years; Elizabeth, aged sixteen years; Noah, aged ten years;
Hannah, aged fifty-nine years; Eliza, aged twenty-seven
47 years; Mahala, aged twenty-seven years; Polly, aged twenty-six years; Mary Jane, aged twenty-six years; Judy, aged nineteen years; Winney, aged twenty-seven years; Charles, aged thirty-five years; Stephen, aged thirty years; Cash, aged twenty-five years; Judy, aged thirty-three years; Louisa, aged twenty-three years; Bob, aged twenty years; Alick, aged fifteen years, and Sophy, aged forty years, together with all and singular the increase of said slaves; also all the horses & mules, cattle, hogs, farming utensils, and other property attached to and belonging to said plantation and negroes and necessary for the cultivation and maintenance thereof; to have and hold the aforedescribed real and personal estate unto said party of the second part, his heirs, executors, administrators, and assigns, forever; in trust, nevertheless, for the uses and purposes following—that is to say: That the said party of the second part shall permit the said party of the first part to retain quiet and peaceable possession of the aforesaid real and personal property and appropriate the profits thereof to their own use until default be made by the said David McCaleb, junior, in the payment of the draft aforesaid endorsed by the said Laughlin, Searles and Company or some part thereof, and then, on such failure to — punctually the said draft or any part thereof, that the said party of the second part shall and will, when thereto requested by the said Laugh-

lin, Searles and Company, or their assigns or representatives, proceed to sell to the highest bidder at public auction
48 for ready money, the aforesaid real and personal property, or so much thereof as may be sufficient, having advertised in a newspaper published in the city of Vicksburg, in Warren county aforesaid, thirty days' notice of the time and place of such sale, and from the proceeds thereof, after defraying the expenses of this trust, pay to the said Laughlin, Searles and Company, their representatives or assigns, the amount of said draft endorsed as aforesaid by the said Laughlin, Searles & Company, and all lawful interest, and also the aforesaid sum of one thousand dollars, evidenced by the note heretofore described, or so much of each said amounts as may be due and unpaid by the said David McCaleb, junior; and should the draft aforesaid be paid and taken up at maturity by the — David McCaleb, junior, then the said real and personal property to remain in the possession of the said parties of the first part until default in the payment of the note be made—that is to say, the note aforesaid for one thousand dollars—and then, in such failure, to proceed to sell, in manner and form as hereinbefore described, the aforesaid real and personal property, or so much thereof as may be sufficient, having given thirty days' notice as aforesaid, and from the proceeds thereof, after defraying the expenses of this trust, pay to the said Laughlin, Searles and Company, their representatives or assigns, the aforesaid sum of money and all lawful interest, or so much
49 thereof as may be due and unpaid; and, after the purposes of this trust have been fully accomplished, pay the balance, if any, to the said parties of the first part, their heirs, executors, administrators, or assigns; but if the said party of the first part, David McCaleb, junior, shall pay and discharge the sums aforesaid as they become due and payable, then this conveyance to become null and void.

In witness whereof the said parties of the first and said parties of the second part have hereunto set their hands and seals this day and year first above written.

D. McCALEB, JR. [SEAL.]
F. McCALEB. [SEAL.]
G. W. McELRATH. [SEAL.]

The words "lot number one in section thirteen," interlined in the 42 line of the first page, "in township fourteen," in 6th line of the second page, and "Alick, aged fifteen years, and" in 31st line of 2nd page were all interlined before the signing of this instrument.

STATE OF MISSISSIPPI, }
Warren County, } *ss:*

Personally appeared before the undersigned, a justice of the peace in and for said county, David McCaleb, junior, and Florida McCaleb, his wife, and George W. McElrath, parties to the foregoing deed of trust, who acknowledged that they signed, sealed, and delivered the same on the day and year therein mentioned, as their

act and deed, and that the said Florida, wife of the said
50 David McCaleb, junior, being by me privately examined, separately and apart from her husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband.

Given under my hand and seal this seventh day of May, A. D. 1846.

JOHN CRAWFORD, *J. P.* [SEAL.]

STATE OF MISSISSIPPI, } *ss:*
Warren County, }

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were filed for record in my office on the 13th day of May, 1846, whereupon I have made the same of record in book U, pages 245, 246, & 247.

Given under my hand and seal of office this 20th day of May, A. D. 1846.

[SEAL.] A. H. ROWLETT, *Clerk.*

STATE OF MISSISSIPPI, *Warren County:*

I, Geo. T. Hardy, clerk of the chancery court in and for the county and State aforesaid, hereby certify that the foregoing
51 six pages and eleven lines contain a true and correct copy of deed of trust from David McCaleb and wife to G.W. McElrath, trustee, for the use of Laughlin, Searles & Co., as the same appears of record and on file in my said office in deed-book U, pages 245, 246, & 247.

Witness my hand and seal of said court this 1st day of July, A. D, 1880.

GEO. T. HARDY, *Clerk,*
By JOS. W. SHORT, *D. C.*

[Endorsed:] Filed July 2, 1881. J. M. McKee, cl'k.

52 Exhibit "D," filed with said bill of complaint, is in the words and figures following, to wit:

EXHIBIT "D."

Copy.

This agreement, made and entered into this fifteenth day of June, A. D. eighteen hundred and forty-six, between John M. Chilton and Charles J. Searles (acting as trustees by virtue of a certain deed of trust, dated the seventh day of June, A. D. eighteen hundred and forty-four, supplementary to a deed of trust executed on the thirteenth day of July, A. D. eighteen hundred and thirty-seven), parties

of the first part, and Joseph E. Davis, of the second part, witnesseth: That for and in consideration of the sum of twenty-eight thousand four hundred and — dollars by the said party of the second part paid, and secured to be paid, to the parties of the — part, as trustees aforesaid, the said trustees have bargained and sold, and do hereby bargain and sell, unto the said Joseph E. Davis the property hereinafter described on the terms and conditions hereinafter set forth, viz:

Whereas by virtue of said deed of trust, dated the seventh day of June, eighteen hundred and forty-four, as aforesaid, and executed by David McCaleb and his wife to Charles A. Jacobs, assignee of Lambeth, and Thompson, of New Orleans, the said trustee did, in conformity to the terms and directions of the said deed of trust, and conformably to the advertisements by them made, as directed
53 by said trust of deed (a copy of which said advertisement is hereto annexed and expressly referred — as part of this deed of agreement)—

Trustee's sale.—By virtue of a certain deed of trust executed to us by David McCaleb and wife, bearing date on the 7th day of June, 1844, supplemental to a deed of trust executed by said McCaleb and wife, dated 15th July, 1837, to secure to the persons therein named the payment of fifteen thousand eight hundred and thirty-two dollars, interest inclusive, we will, as trustees, on the 15th day of June, 1846, on the premises, at Diamond Place, the residence of said McCaleb, proceed to sell to the highest bidder for cash, all the lands described in said deed of trust, containing about one thousand two hundred and twenty acres, in township fourteen, range two east, and all the negroes on said land, and described in said deed of trust, being about forty-two in number, and their increase. Sale to take place between the hours [of 12] m. and 4 p. m. We will convey such title as is vested in us by said deed of trust. John M. Chilton, C. J. Searles, trustees. May 12th—

On the fifteenth day of June, A. D. eighteen hundred and forty-six, on the premises described in said advertisement, proceed to sell, for cash, at public auction, the property described in said deed of trust, to satisfy and pay the balance of the debt secured by said deed of trust, and then in arrear- and unpaid, all the cost and charges of of executing said deed of trust, and the same amounting to the sum of thirteen thousand seven hundred and thirty dollars, principal, five hundred and seventy-nine dollars and thirty-eight cents,
54 interest, seven hundred and fifteen dollars and fifty-six cents, commissions of trustees, and ten dollars, costs of advertising said notice, making in all fifteen thousand and thirty-six dollars and ninety-four cents.

And whereas at said sale Joseph E. Davis, being the highest bidder, became the purchaser of the following-described property, at the prices respectively attached thereto, viz., the following negro slaves, to wit:

1	Joe, aged about 41 years			1 family.	At		$1,311 00
	Mary Jane (his wife), 22 "						
	Amelia, daughter						
	Austin, aged 42 years						
	Sylvia, " 37 "						
	Priscilla, " 19 "						
	Ben, " 16 "						
2	Betsey, " 13 "			1 family.	At		$2,300 00
	Alice, " 13 "						
	Kate, about 9 "						
	Harry, 7 "						
	John, aged 'bout 31 "			1 family.	At		$1,107 00
	Judy Black, 20 "						
	Dave, Edy, Jennette — Children						
4	Tom, aged 35 years			1	At		$400 00
	Cupid, " 28 "			1 family.	At		$1,152 00
	Caroline, " 25 "						
5	Fanny, " 7 "						
	Hannah, aged 3 years						
55	Vina, " 53 "			1 family.	At		$251 00
	Jack, " 22 "						
6	Elizabeth, " 17 "						
	Noel, " 11 "						
7	Mahala, " 28 " & children.			1 family.	At		$550 00
	Gustus, aged 6 "						
	Louise, " 3 "						
8	Polly, " 27 "			1	At		$500 00
9	Mary Jane, " 22 "			1	At		$501 00
	Eliza, " 28 "			1 family.	At		$475 00
	Jess, Ellen — Children						
11	Winney, aged 28 years			1	At		$400 00
	Will, " 70 "			1	At		2 00
12	Barley, " 54 "						
	Rhody, " 38 "			1 family.	At		$601 00
13	Priscilla, " 18 "						
	Thaddeus, " 12 "						
	Carried up, dollars						$9,550 00

		Amount brought up			$9,550 00
		Anna, aged 45 years	1 family.		
		Esther, " 20 "			
		Caroline, " 18 "		At	$1,701 00
		Field, aged 22 years			
56	14	Betsy, " 14 "			
		Marcia, " 45 "	1 family.		
		Lilly, " 25 "			
		Rose, " 24 "			
15		Anthony, " 12 "		At	$1,500 00
		Henry (child)			
		Eliza, " 20 "			
		Angeline, child			
		Kitty Jane, "			
16		Hannah, aged 54 years	1	At	$20 00
					$12,771 00

Together with all the increase of said slaves, whether herein particularly named or not.

And whereas the said Davis became the purchaser also of the following-named land, to wit, lots one and two, in section thirteen, township fourteen, range two east, containing together about two hundred and twenty acres; also parts of sections twelve, thirteen, fourteen, and fifteen, in township fourteen, range two east, for a more particular description of which reference is here made to said deed of trust, as part of this assignment, for the sum of fifteen thousand seven hundred and sixty dollars;

And whereas (the said Charles A. Jacobs being willing to extend the time of payment of said sum due to him as aforesaid, and the said trustees being also willing to have their commissions likewise included in said extension, provided the said Jacobs shall on sight
57 of the agreement confirm and assign the same) the said Joseph E. Davis has executed his promissory note in favor of said Charles A. Jacobs for the sum of fifteen thousand and thirty-six dollars and ninety-four cents, payable on the first day of December, A. D. eighteen hundred and forty-six, at the Mechanics' and Traders' Bank of New Orleans, with interest thereon at eight per cent. from date, in consideration of which said premises it is hereby agreed by said trustees (subject always to the future consent and signature of said Jacobs hereto) that at the maturity of said note, on payment of one-third of said sum in said note specified, viz., on payment of five thousand and twelve dollars thirty-one $\frac{1}{3}$ cents, and of the interest then due and in arrears in the whole sum specified in said note, then and in that event the time of payment of the residue shall be extended to the first day of December, A. D. eighteen hundred and forty-seven, and then upon payment of a like third of the residue of said sum of money in said note remaining unpaid, and all interest due thereon, the time of payment of the residue shall be extended till the first day of December, eighteen hundred and forty-

eight, when the whole of the residue and all interest accrued thereon shall be payable absolutely; and it is further agreed (subject to the approval of said Jacobs aforesaid) that the title to all [of] said property shall be and remain in said trustees until the final payment and discharge of said — and all interest thereon, but upon final
58 payment and discharge the trustees or either of them shall by an entry of such satisfaction and a transfer of title, either made on the margin of the record of this agreement or otherwise, vest the title of said property absolutely in said Joseph E. Davis. Nevertheless, if the said Davis shall fail to pay either of the installments herein provided for, according to the terms and conditions of this assignment, then this agreement shall be of no effect and said property shall vest and remain absolutely in the trustees for the use and benefit of the said Jacobs and his heirs forever. Nevertheless, also, on the following condition, to wit: That whereas the surplus of said purchase-money of said land, after deducting the amount due to said Jacobs as aforesaid, amounts to the sum of thirteen thousand four hundred and ninety-four dollars six cents; and whereas the said Charles J. Searles, and William Laughlin and Edmond C. Laughlin, under the style and firm of Laughlin, Searles & Co., are holders of a claim against said McCaleb, secured by a deed of trust on the property herein sold, dated the seventh day of May, A. D. eighteen hundred and forty-six, for the sum of four thousand and two hundred dollars, or thereabouts, payable three thousand two hundred and one dollars sixty-one cents on the twenty-sixth day of October, A. D. eighteen hundred and forty-six, and one thousand dollars on the fifteenth day of November, A. D. eighteen hundred and forty-six, which said deed of trust they claim to be entitled to satisfaction *of* out of said surplus; and whereas the said Davis has agreed to pay and discharge said deed of trust, which
59 will leave of said surplus to be refunded to said David McCaleb, according to the deed of trust to said Chilton and Searles, the sum of about nine thousand two hundred and ninety-four dollars, upon payment and satisfaction whereof the said trustees agree to convey said land to said Davis as against all persons only claiming said surplus, and subject to the lien in favor of said Jacobs hereby created, but until such payment and satisfaction of said residue of the surplus aforesaid the title to said land shall remain in said trustees as a security thereof, and the said Davis hereby agrees to save harmless the said Chilton and Searles against all liabilities whatever which they may possibly incur by reason of payment of said claim of Laughlin, Searles & Co.

In testimony whereof the said C. J. Searles and J. M. Chilton, trustees as aforesaid, and the said Joseph E. Davis have [here]unto affixed their hands and seals this 15th day of June, 1846.

JOHN M. CHILTON. [SEAL.]
CHARLES J. SEARLES. [SEAL.]
J. E. DAVIS. [SEAL.]
CHARLES A. JACOBS. [SEAL.]

JOS. H. JOHNSTON,
G. P. COSBY,
Witness- *so* as to the signature of Chas. A. Jacobs.

J. P. HARRISON,
R'D POCHELEE,
As to C. A. Jacobs.

STATE OF LOUISIANA, *City of New Orleans:*

Before me, Theodore H. McCaleb, judge of the district court of the United States in and for the district of Louisiana, personally appeared Charles A. Jacobs, of this city, who is personally
60 known to me, and who declared and acknowledged that he signed, sealed, and delivered the foregoing agreement as his own proper voluntary act and deed for all the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and — at New Orleans this 23rd day of June, A. D. 1846.

THEO. H. McCALEB. [SEAL.]

STATE OF MISSISSIPPI, } *ss:*
Warren County, }

Personally appeared before me, Nathan G. Bryson, a justice of the peace in and for said county, the above-named Charles J. Searles and John M. Chilton, who acknowledged that they signed, sealed, and delivered the foregoing agreement, on the day and year therein mentioned as their act and deed.

Given under my hand and seal this 27th day of March, A. D. 1847.

N. G. BRYSON, *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI, } *ss:*
Warren County, }

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificates were filed for record in my office on the 6th day of April, 1847.

Whereupon I have made the same of record in book N, pages 622, 623, 624, & 625.

Given under my hand and seal of office this 11th day of June, A. D. 1847.

[SEAL.] A. H. ROWLETT, *Clerk.*

61 THE STATE OF MISSISSIPPI, *Warren County:*

I, George W. Davenport, clerk of the chancery court within and for said county, do hereby certify that the foregoing ten pages contain a true and correct copy of said deed of agreement and certificate thereto between John M. Chilton and Charles J. Searles, trustees, and Joseph E. Davis, as the same appears of record in my office in book N, pages 622, 623, 624, & 625.

Witness my hand and seal of said court, affixed at — office, this the 11th day of August, A. D. 1874.

[SEAL.] GEO. W. DAVENPORT, *Clerk.*
W. H. NELSON, *Deputy Clerk.*

Endorsed: Filed July 2, 1881. J. M. McKee, cl'k.

62 Exhibit "E," filed with said bill of complaint and prayed to be made a part of said bill, is in words and figures following, to wit:

EXHIBIT "E."

This indenture made this 27th day of December, 1858, between Joseph E. Davis, of Warren county, Mississippi, party of the first part, and Edmund C. Laughlin and Florida Laughlin, wife of the said Edmund, of the same county, party of the second part, witnesseth: That the said party of the second, for and in consideration of the natural love and affection he has for his daughter, the said Florida, and the sum of one hundred dollars to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has demised, leased, and to farm-let, and by these presents does demise, lease, and to farm-let to the said party of the second part that certain plantation on the Mississippi river, in said county, called the Diamond Place, on which the said party of the second part now reside-, and the appurtenances thereof, and also the following slaves on said plantation, to wit, Maria, aged 65 years; Anthony, her son, 28; Henry, 22; Bob, 28; Rosetta, his wife, 30; Robin, Mary Anne, Edmund, and Nelson, their children, aged 11, 9, 5, and 3; Ailse, his wife, 33; Harriet, 7, and Edmond, 1½, their children; Austin, 45, and Edy, his wife, 25; Kate, 25; Harry, 21; Ambrose 2 and Austin, Jr., 10 mo's, children of Austin; Cubit, 38, and Caroline, his wife, 40; Agnes, their child, 11;
63 Feild, 28, and Fanny, his wife, 25; Tom, 48, and Mahala, his wife, 45; Gust, 16; Louisa, 15; Sam, 11; and Lucy, 9—their children; Rhoda, 60; Lilla, her daughter, 30; Thadeus, her son, 25; and Henry, her grandchild, 3; Anna, 65; Belt, her daughter, 28; George, Belt's child, 5; ——, —, and Esther, his wife, 30; Charles, 40, and Eliza, his wife, 38; Jess, 22; Ethan, 16; Kerby, 14; Richard, 3, and Charles, Jr., 1—their children; George, 70, and Hannah, his wife, 75; John, 45, and Judy, his wife, 42; Dan, 19; Jennett, 15; Sally, 10; Matilda, 4; Keziah, 2—their children; Aleck, 30, and Caroline, his wife, 29; Paul and Luke, twins, 5, and Aleck, Jr., 3, their children; Uncle Will, 80; Judy, his wife, 50; Stephen, 42, and Polly, his wife, 40; Viney, 55; Jack, 27, and Noah, 21, her sons; Pricilla, Jack's wife, 30; Jo., 55, and Lily, his wife, 39; Kitty, their daughter, and Jo., Jr., their child, 1; ——, —, and Amanda, his wife, 35; Cash, 38, and M. Jane, his wife, 34; Milly, 16; Washington, 9; Amanda, 5, and Simeon, 1½—their children; Sophia, 58; Louisa, 38; Jim, her son, 15; and Winney, aged 64 years; also 8 horses, 20 mules, 3 colts, 86 head of cattle, 60 sheep, and 34 hogs. To have and to hold the said plantation and slaves, and their increase, and the other personal property, unto the said party of the second part,

for and during the natural life of the said Florida Laughlin. And the said party of the second part covenant and agree with the said party of the first part, his heirs, executors, and administrators, that they will manage the said plantation and slaves in a proper
64 and husbandlike manner, and at the termination of this lease will quietly surrender the said plantation and slaves, and their increase, and the other above-named personal property, or so much thereof as may be then remaining, unto the said party of the first part, his heirs, executors, administrators and assigns, in as good condition as the same now is, natural wear and tear and unavoidable accidents except-, it being hereby acknowledged that the sole legal and equitable title in and to said plantation and slaves and other property is in the said party of the first part, and the right of property in him.

In witness whereof the said parties have hereunto set their hands and seals the day and year first above written.

J. E. DAVIS. [SEAL.]
FLORIDA LAUGHLIN. [SEAL.]
E. C. LAUGHLIN. [SEAL.]

F. W. DAMERS.
T. G. CUNNINGHAM.
T. C. LEDYARD.

STATE OF MISSISSIPPI, }
Warren County, } ss:

This day personally appeared before me, the undersigned, an acting justice of the peace in and for said county, the above-named Edmond C. Laughlin and Florida Laughlin, his wife, and acknowledged that they signed, sealed, and delivered the foregoing deed as their voluntary act and deed on the day and year therein mentioned. And the said Florida Laughlin, wife of the said
65 Edmond Laughlin, on a private examination, separate and apart from her said husband, Edmond, acknowledged before me that she signed, sealed, and delivered the foregoing deed as her voluntary act and deed, freely, without any fear, threat, or compulsion of her said husband.

Given under my hand and seal this thirty-first day of May, A. D. 1859.

LAZ. LINDSAY, *J. P.* [SEAL.]

STATE OF MISSISSIPPI, }
Warren County, } ss:

I, James C. Chappell, clerk of the probate court of said county, do hereby certify that the foregoing deed of gift and certificate were filed for record in my office on the 31st day of May, A. D. 1859; whereof I have made the same of record in deed-book "B B," pages 234 & 235.

Given under my hand and seal of office this the 13th day of June, A. D. 1859.

[SEAL.] J. C. CHAPPELL, *Clk.*

Filed July 2, 1881.

J. M. McKEE, *Clerk.*

66 And on said 25th day of June, A. D. 1881, a subpœna was issued in said cause, which, with the return of the marshal thereon, is in the words and figures following, to wit:

67 UNITED STATES OF AMERICA,
Southern District of Mississippi:

The President of the United States to the marshal of the southern district of Mississippi, Greeting:

You are hereby commanded, without delay, to summon Jefferson Davis & Jos. H. D. Bowman, as executors of Joseph E. Davis, deceased, and J. D. Mitchell, citizens of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules to be holden in the clerk's office of said court on the first Monday in August next, to answer a bill in equity exhibited against them by Florida Laughlin, a citizen of the State of Tennessee, and unless they shall enter their appearance therein in the clerk's office aforesaid on or before the time specified above the said bill will be taken for confessed, and have then [and] there this writ and how you have executed the same.

Witness the Honorable M. R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court the 25th day of June, A. D. 1881, and in the 105th year of the Indep-ence of the United States of America.

[L. S.] JAS. M. McKEE, *Clk.*

Marshal's Return.

Summoned the within-named defendant, J. D. Mi-chell, personally, by handing him a true copy of this writ this 11th day of July, A. D. 1881.

THOS. W. HUNT, *U. S. Marshal,*
By F. W. LITTLE, *D'p'ty U. S. M.*

68 Afterwards, to wit, July 25th, 1881, the defendant, Joseph D. Mitchell, by counsel, entered his appearance as follows:

In the Circuit Court of the United States for the Southern District of Mississippi. Equity.

FLORIDA LAUGHLIN
vs. } No. 314.
J. D. MITCHELL *et al.*

To the clerk of the circuit court for said district:

You will please enter the appearance of the defendant, Jos. D. Mitchell, to the bill of complaint exhibited in the above-entitled cause at August rules.

A. M. LEA,
Sol. for D'f't Mitchell.

Endorsed: Filed July 25th, 1881. J. M. McKee, cl'k.

And afterwards, to wit, on the 1st day of September, A. D. 1881, the defendant, J. D. Mitchell, filed in the office of the clerk of
69 the said court his answer to the said bill of complaint in the words and figures following, to wit;

Answer of A. M. Lea for Defendant.

In the Circuit Court of the United States for the Southern District of Mississippi.

FLORIDA LAUGHLIN

vs.

JOSEPH D. MITCHELL & the Executor of Jos. E. Davis.

The answer of Jos. D. Mitchell to the original bill of complaint exhibited against him in said cause by Florida Laughlin.

To the honorable the judges of the circuit court of the United States for the southern district of Mississippi:

The defendant, answering, says: He denies that complainant is now or ever was the owner of the plantation known as "Diamond Bend Place," and more particularly described in said bill; de-
70 nies that she is now in possession of said plantation as owner or that she was ever, as owner, possessed of the same; admits that complainant is a daughter of Jos. E. Davis, deceased, and that this defendant is his grandson; admits the death of Jos. E. Davis in the year 1870, and the execution and probate of his last will and testament as alleged in said bill, and admits that Exhibit "A" thereunto is a copy thereof; admits that by the first clause of said will the testator devised all of his estate to this defendant and his sister, subject to legacies and bequests thereinafter made, and admits that the second and third clauses in said will are as stated in said bill; admits that under the said devise to him he claims the fee in said lands, and denies that complainant has any right or interest in said lands, save as the tenant of Jos. E. Davis; denies that the said Jos. E. Davis became possessed of said lands through her and as her trustee, and avers the truth to be that said Jos. E. Davis purchased the said lands on June 15th, 1846, and the full, legal, and equitable title thereto remained in him up to
71 the time of his death; admits that on June 7th, 1844, complainant was the wife of David McCaleb; that she and her said husband were then living on said plantation, which had been the property of said McCaleb before his intermarriage with complainant; admits the execution of the deed in trust to secure the indebtedness due to Lambell and Thompson at the time and for the amount stated; admits the execution of the new deed of trust to secure the payment of said indebtedness to Chas. A. Jacobs, to whom it had been assigned, and admits that Exhibit "B" to said bill is a copy of said deed; admits the execution of the deed in trust to secure the indebtedness due Laughlin, Searles & Co., and for the amount and on the property mentioned in the bill, and that Exhibit "C" is a copy of said deed; admits that said McCaleb owed other large

debts which were pressing him, and that his situation was then precarious, and he admits the advertisement of the property for sale at public auction on the 15th day of June, 1846, pursuant to the terms of the deed in trust in favor of the said Charles A. Jacobs. Defendant is ignorant of any arrangement made to
David McCaleb with his uncle, Jonathan McCaleb, or with
72 any other kinsman, near or remote, or with any other person looking to the purchase of said property at said sale, and if to be in any manner affected thereby, requires strict proof. Defendant denies each and every averment in said bill setting up any arrangement, agreement, or understanding made by said Jos. E. Davis with said David McCaleb, or with said Jonathan McCaleb, or with the complainant, for the purchase of said property in trust for complainant; and, upon information and belief, defendant alleges the truth to be that the said Jos. E. Davis purchased the said property at said sale in his own right, and thereby acquired the full beneficial and legal title thereto. Defendant has no knowledge of the acts or doings of said Jonathan McCaleb at said sale, or whether the said Jonathan was, in fact, there or not, and if to be affected thereby requires proof. The defendant admits the execution of said instrument filed with said bill as Exhibit "D," and admits that it correctly describes the terms of the purchase of said property by said Davis at said sale; and, upon information and belief, defendant alleges the
fact to be that the full sum, $28,530.00, was paid by said Joseph
73 E. Davis in accordance with the terms of said instrument. Defendant admits "that after said sale to said J. E. Davis complainant with her husband continued to reside on said plantation and to cultivate it as before, but he alleges that said occupancy was by the permission and consent of said J. E. Davis, and was at all times subordinate to the paramount right and title of said J. E. Davis in and to said property." Defendant says it is not true, as alleged in said bill, that said J. E. Davis never during the lifetime of said David McCaleb claimed to have any beneficial interest in said property, but, on the contrary, he alleges the truth to be that the said McCaleb and the complainant at all times recognized the ownership of said J. E. Davis in said property, and were fully cognizant of the fact that, although the said J. E. Davis purchased said property to save complainant from being turned out of her home, he never contemplated giving her the fee in said lands, nor other interest than a life estate. He admits that no account was kept or demanded by the said J. E. Davis of the rents, issues, and profits of said plantation,
the said J. E. Davis being content that complainant, his said
74 daughter, should enjoy the usufruct of said property during her life, as fully appears by a subsequent lease to her and the terms of his said will.

Defendant is ignorant whether the said McCaleb was a man of great dignity of character or not, or whether he was sensitive, high-spirited, and self-reliant, or whether he was quick to assert in an aggressive manner any infringement of his rights by others, and if he is to be in any manner affected thereby, demands strict proof. He admits that David McCaleb died in May, 1847; he denies that

complainant shipped the crop of '47, to be applied to the Charles Jacobs judgment, or that the crop of the previous year was shipped for the account of said indebtedness; that any other crops were so shipped; and, on information and belief, he alleges the truth to be that neither the said David McCaleb, nor complainant, nor any one else ever paid to said Joseph E. Davis any portion of the said sum of $28,531.00, which constituted the purchase-money of "Diamond Place," nor was it ever contemplated that such sum should be refunded. He admits the marriage of complainant, in July, '48, with E. C. Laughlin, her present husband, and that she with her
75 said husband continued to live on said place. He denies that they continued to ship the crops of said place to the account of said pretended debt, or that J. E. Davis ever received any of the proceeds thereof.

Respondent does not know whether complainant applied to her father to make her a title to said property some years after her marriage with Laughlin, or at any other time, but he does know that the said J. E. Davis did not make such title, but always entertained and expressed a fixed determination not to do so, one reason frequently assigned by him being his distrust and dislike for the said E. C. Laughlin, her husband.

Respondent denies that the ownership of complainant in said property was ever recognized or admitted by said J. E. Davis to her or any one else, either orally or in writing, and he denies the averments in said bill of any recognition or acknowledgment of title or ownership in complainant made by said J. E. Davis, or of any claim or pretence of ownership made by complainant to said J. E. Davis at any time.

Respondent denies that on the 27th day of December, 1858,
76 the said J. E. Davis had conceived the purpose of securing the ownership of said property to himself, and of converting the title which he had held in trust for complainant into an indefeasible and beneficial title, contrary to previous declarations, and he says that this charge and all other charges of evasion, fraud, deceit, threats, cruelty, or oppression made by complainant against her father in said bill are ungracious, defamatory, and false.

He admits that on the 27th day of December, 1858, the complainant and her said husband signed the instrument of lease mentioned in said bill and that Exhibit "B" to said bill is a true copy thereof, and he admits that they subsequently acknowledged the same in May, 1859.

He denies that the signature of complainant or her said husband, or their subsequent acknowledgment of said deed, was procured by the compulsion, threats, or other undue influence of said J. E. Davis, but he alleges that they signed, sealed, and acknowledged said deed as their free and voluntary act and deed, and said deed was intended by the said J. E. Davis as a provision for his said daughter and as an assurance to her of a home for the remainder of her life.

77 He denies specifically each and every statement in said bill relating to the execution and acknowledgment of said deed which sets up any manner of compulsion, force, importunity

or threats on the part of said J. E. Davis, and any act or thing then done or said by complainant, by said J. E. Davis, by said E. C. Laughlin, or by any one else which indicates that the execution and acknowledgment of said instrument was not the free and voluntary act of all the parties thereto. He admits that some correspondence was afterwards had between the said J. E. Davis and the said Laughlin and wife looking to the purchase of said place by them from him, but he does not know whether the extract purporting to be part of a letter from said J. E. Davis, dated Jan. 25th, 1869, is a part of said letter, or, indeed, whether the said letter was, in fact, written or not; but he denounces as false the charge or insinuation in said bill that his grandfather provoked the said correspondence for the purpose of securing any admission from complainant or her said husband which could be used for their prejudice.

He admits that said J. E. Davis, the son of Hugh R. Davis,
78 mentioned in the will, has departed this life, and he admits that Jefferson Davis & J. H. D. Bowman are the executors of said will and are residents of this judicial district.

And having fully answered, this defendant prays to be hence dismissed with reasonable costs. JOSEPH D. MITCHELL.

A. M. LEA, *Solicitor.*

Endorsed: Filed Sept. 1st, 1881. J. M. McKee, cl'k.

And afterwards, to wit, on the 26th day of October, A. D. 1881, the complainant filed in the office of the clerk of the circuit court her replication to the defendants' answer in the words and figures following, to wit:

79 Circuit Court of the United States, Southern District of Mississippi.

FLORIDA LAUGHLIN)
vs. 314.
JOS. D. MITCHELL *et al.*)

This repliant, saving and reserving to herself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiences of the answer of the said defendants, for replication thereto saith that *he* doth and ever will aver, maintain, and prove *his* said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without th*at*, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by *his* said bill *he* hath already prayed.

PITTMAN, PITTMAN & SMITH,
Sol's for Complainant.

Endorsed: Filed Oct. 26, 1881. J. M. McKee, cl'k.

80 And afterwards, to wit, on 27 Dec., 1882, the deposition of T. C. Bedford, a witness for complainant in said cause, was filed in said cause, & is in the words & figures following, to wit:

Deposition of Thomas C. Bedford for Compl't. Filed December 27th, 1882.

In the Circuit Court of the United States for the Southern District of Mississippi. In Equity.

FLORIDA LAUGHLIN *vs.* J. D. MITCHELL *et al.*

Before the undersigned, examiner of the circuit court of the United States for the southern district of Mississippi, at Vicksburg, in said district, on the 20th day of December, A. D. 1881, in the presence of Pittman & Smith, counsel for complainant, and A. M. Lea, counsel for defendant, personally appeared Thomas C. Bedford, a witness for the complainant in said cause, who, being by me first duly sworn according to law, in answer to the following interrogatories testified as thereafter written:

81 Int. 1. State your name, age, residence, & occupation.

Ans. T. C. Bedford; age, about 54; residence, Vicksburg; occupation, planter.

Int. 2. Where did you live in June, 1846?

Ans. In Madison parish, La., opposite Warrenton.

Int. 3. How far was that from what is known as the Diamond Place, then owned by David McCaleb?

Ans. About ten miles.

Int. 4th. State whether you were personally acquainted in [a] general way with David McCaleb, Mrs. McCaleb, Joseph E. Davis, and Jonathan McCaleb, and the plantation known as Diamond Place.

Ans. I knew David and Mrs. McCaleb and Jos. E. Davis; I did not know Jonathan McCaleb personally; I knew in a general way the property there referred to.

Int. 5th. Do you remember to have heard of the sale of that property under a deed of trust about that time?

82 Ans. to int. 5th. I remember of hearing of the sale about the time it occurred, but do not know whether under deed of trust or judgment.

Int. 6th. Do you know who was the reputed beneficial owner, by common repute, of the property after the purchase?

(Objected to by defendants.)

Ans. The impression made on my mind and the general talk there was that it was bought by Mr. Davis for Mrs. McCaleb.

Int. 7th. Was there ever any different reputation as to ownership in the county until after the death of Joseph E. Davis?

(Objected to by defendants.)

Ans. None that I have ever heard of.

Int. 8th. Were you or not acquainted approximately with the value of slaves and of the Diamond Place at that time?

Ans. I don't recollect what the value of property was at that time, but my impression is that the land at that time was worth about thirty thousand dollars.

83 Int. 9th. What were healthy and able-bodied slaves worth at that time?

Ans. I don't recollect at that time what they were worth; slaves fluctuated more at that time than lands.

Int. 10th. State whether you would consider twenty-eight thousand dollars ($28,000.00) a fair value at that time for the place and fifty-two able-bodied slaves, or would it be out of proportion to its real value?

Ans. I should consider that a very great bargain at that time. I should the property at time worth double that amount.

Cross-examination:

X Int. 1. How old were you at that time? Were you living near the*ir* then?

Ans. I was about 19 years old at that time, and lived down there.

X Int. 2. When you speak of the talk of the sale, of its having been made for the benefit of Mrs. McCaleb, what do you mean?

84 Ans. to X Int. 2. I have already said what I meant by it. It was my impression, which I expect I got more from my uncle, who was a intimate friend of Mrs. Laughlin. The impression was also made in my mind by her retaining possession of it.

And further deponent saith not.

T. C. BEDFORD.

Rebuttal:

Int. 1. In your direct examination you stated that you had obtained this impression from general talk in the neighborhood. In answer to a cross-question you have entirely omitted to make any reference whatever to any general repute touching the matter. Please state now whether you desire to be understood as restricting your answer as you have done in your cross-examination, or whether you intended that as merely additional to your answer to the question in direct examination.

Answer. I did say in answer to Mr. Lea's question that I obtained it from general talk and from the circumstances above mentioned. I did not intend to restrict the answer at all. It was the gen-

85 eral talk that McCaleb had become involved, and that the place had to be sold to secure it to Mrs. Laughlin, and it was bought in by Mr. Davis for that purpose.

Recross by Mr. LEA:

Int. 1st. Do you know when the sale was made?

Ans. I do not.

T. C. BEDFORD.

And I, the said examiner, do hereby certify that the answers to said interrogatories were written down by me in the presence of said

Thomas C. Bedford, and after having been read by me to said witness were signed by him in my presence.

Given under my hand this 20th day of December, A. D. 1881.

JAS. M. McKEE, *Examiner.*

Endorsed: Filed Dec. 27, 1881. J. M. McKee, cl'k.

And on said 27th day of December, A. D. 1881, the deposi-
86 tion of E. D. Farrar, a witness for the complainant in said cause, was filed in the office of the clerk of said court in the words and figures following, to wit:

In the Circuit Court of the United States for the Southern District of Mississippi. In Equity.

FLORIDA LAUGHLIN *vs.* JOS. D. MITCHELL *et al.*

Before the undersigned, examiner in equity in said court, at Vicksburg, in said district, on the 20th day of December, A. D. 1881, in the presence of Messrs. Pittman & Smith, att'ys for complainant, and A. M. Lea, counsel for defendant, personally appeared E. D. Farrar, a witness for the complainant in said cause, who, being by me first duly sworn according to law, in answer to the following interrogatories, testified as thereafter written.

87 *Deposition of Judge E. D. Farrar.*

Int. 1. What is your name, age, residence, & occupation?

Ans. Edgar D. Farrar; residence is in Louisiana, Madison parish; age, 60 years; occupation, lawyer.

Int. 2. Where did you live, and what was your occupation in 1846?

Ans. I lived in Tensas parish, La., and practiced law.

Int. 3. State whether you were well acquainted at that time with David McCaleb, Jonathan McCaleb, and Joseph E. Davis.

Ans. I was well acquainted with all of them, and as intimate as the disparity of our ages would admit; I had known them from my earliest recollection.

Int. 4. One of the allegations of the bill in this case is that David McCaleb was a man of great dignity of character, sensitive, high spirited, and self-reliant, and that he was quick to resent in an aggressive manner any infringement of his rights by others;
88 state what was his character & reputation in reference to these matters.

Ans. to Int. 4th. My estimate of his character was just such as is stated in that allegation; he was a proud man—to haughtiness sometimes; he was quick and just such a character as there described.

Int. 5. State whether or not you know the pecuniary condition of Jonathan McCaleb at that time, and whether or not he was in such credit and condition as to be able to command large sums of money if occasion required?

Ans. He was a man of large possessions and reputed to be very wealthy; my impression is that he was a very wealthy man for

those days; he was accustomed to dispense a generous hospitality, and was regarded as a man of great generosity and liberality, particularly to members of his family.

Int. 6th. From his reputation in the respects which you have mentioned, would he, in your opinion, have been able to command large sums of money if occasion required?

Ans. My impression, from my knowledge of his large property and his reputation for strict business integrity and uprightness, would induce me to answer that question affirmatively.

Int. 7th. State, if you know, what were the relations existing between Jonathan McCaleb and David McCaleb, the husband of Mrs. Laughlin.

Ans. So far as I know, they were of a very intimate character—almost that of father and son.

Int. 8th. Was Jonathan McCaleb a married man, and did he have a family of his own?

Ans. Jonathan McCaleb was a bachelor; never married; he was an uncle of David McCaleb, Jr.

Int. 9. Do you remember the fact that the plantation then owned by David McCaleb, known as the Diamond Place, was sold in 1846?

Ans. No, I do not; I have no recollection of seeing Mr. David McCaleb since 1845. Jonathan McCaleb lived in Claiborne county; David McCaleb lived on Diamond Place.

E. D. FARRAR.

And I, the said examiner, do hereby certify that the answers to said interrogatories were written down by me in the presence of said E. D. Farrar, and, after having been read over by me in the hearing of said Farrar, were by him signed in my presence. Given under my hand this 20th day of December, A. D. 1881.

JAS. M. McKEE, *Examiner.*

Endorsed: Filed Dec. 27, 1881. J. M. McKee, cl'k.

And afterwards, to wit, on the 27th day of December, A. D. 1881, the deposition of Mrs. Julia Porterfield, a witness for the complainant in said cause, was filed in the office of the clerk of said court, and is in the words & figures following, to wit:

In the Circuit Court of the United States for the Southern District of Mississippi. In Equity.

FLORIDA LAUGHLIN *v.* JOE D. MITCHELL *et al.*

Before the undersigned, in equity of said court, at Vicksburg, in said district, on the 20th day of December, A. D. 1881, personally

appeared Julia Porterfield, a witness for the complainant, who, being by me first duly sworn, testified as follows:

Mrs. JULIA PORTERFIELD, being duly sworn, says, in answer to interrogatories, as follows:

Direct:

Int. 1. What is your name and residence?

Ans. Mrs. Julia Porterfield; Vicksburg, Miss.

Int. 2. Were you or not acquainted with David McCaleb, Jonathan McCaleb, and Mr. Joe E. Davis?

92 Ans. I was, very well; they were relatives of mine. Mr. David McCaleb was my brother-in-law; Mr. Jonathan McCaleb was the uncle of my brother-in-law, & Mr. Joseph E. Davis was the father of my half sister, Mrs. Laughlin. Mr. David McCaleb married my half sister, Mrs. Florida Laughlin, the complainant in this suit. In June, 1846, I lived at Diamond Place, Warren county, Miss. My brother-in-law, Mr. David McCaleb, owned Diamond Place at that time, and I lived with him & his wife; was raised by them. I was present and on the place at the time Diamond Place & the slaves thereon were sold & purchased by Mr. Joseph E. Davis. The place & slaves were bought in by Mr. Davis for my sister, Mrs. Laughlin. The sources of my knowledge on this fact were right in the family from conversation at the time and since; I was a child at that time; I must have been ten or twelve years old at that time. Mr. Jonathan McCaleb was present

93 the day the sale took place. He came there intending to buy the place in for his nephew, Mr. David McCaleb, Jr. I know that he did not do this because of the earnest request of Mr. Davis, who preferred to buy it for my sister, Mrs. Laughlin. I know this because it is a matter of common repute & talk in the family, both at that time and since. I know it just as I know that Mrs. Laughlin is my sister. Mr. Jonathan McCaleb was not a man of family; he was an old batchelor. The relations existing between Mr. Jonathan McCaleb & his nephew were friendly; Mr. Jonathan was devoted to my brother-in-law and he to his uncle. Mr. Jonathan was a gentleman of very good circumstances and would have been able to raise the money to make the purchase had he so desired if he did not have it. He was a wealthy man.

Mr. McCaleb did not live longer than two years after the sale, and Mrs. Laughlin married her present husband about a year

94 after the death of Mr. McCaleb. Mr. & Mrs. McCaleb continued to reside upon the place after the sale, and Mr. & Mrs. Laughlin have continuously resided on the place from the time of their marriage, except a few months after their marriage, when they resided in New Orleans. They have been continuously in the possession of the place. I resided on the place after the sale up to the date of my marriage, which was, I think, in 1850.

Cross-examined by Mr. LEA, for def'ts:

Mrs. Laughlin resides at Diamond Place; she spends almost [all] her time there. Some summers she spends the summer away; she generally spends them away. Mr. Laughlin resides at Diamond Place. I think she has a domicile or place of abode elsewhere; I think it is in Tennessee. Mr. Laughlin was in very good
95 circumstances at the time he moved on Diamond Place; I think he was what you call a successful merchant; I considered him very independent. Mr. & Mrs. Laughlin don't travel every summer; they have no family of their own; they have no children of their family; their family consist- of Mr. & Mrs. E. Laughlin, Rev. Mr. E. C. Laughlin, Miss Fannie Laughlin, & Jeff. D. Laughlin; those are nephews and neices of Mr. Laughlin; their family has consisted of those members since a short time after my sister's marriage. I think when my sister took Miss Fannie she was about 16 years old; I think she is the oldest of them, but am not positive; I suppose there must have been a year or two difference in their ages, but cannot speak positively. I don't think these children had any estate of their own which they have been able to reach; my sister & their uncle has supported & educated them. Mr. Jeff. Laughlin is planting for
96 himself on the Diamond Place; the Rev. Mr. Laughlin has a chappel on the place, in which he officiates; he has no other business; Miss Fannie is not married; I presume the difference in the ages of these children are about the usual differences in families—say 1½ & 2 years; Mr. Laughlin has no means that I know of apart from Diamond Place, nor do I know whether he ever has had since the marriage to my sister; he might have means from various sources & I would not know of it—I don't know; I don't know the age of Mrs. Laughlin; I suppose she is over fifty; Mr. Joseph E. Davis is the father of my half sister; I know that Mr. Laughlin purchased slaves and put on the place after he married; I think he brought them up when he came.

Re-examined by Mr. SMITH for compl'ts:

97 I heard Mr. Laughlin say that the house of Laughlin, Searles & Co. advanced money to make a payment on a purchase.

Recrossed by Mr. LEA for def't:

I know that the sale took place on Diamond Place.

JULIA PORTERFIELD.

And I, the said examiner, do hereby certify said deposition was wholly taken down by me in writing at the time and place stated in the caption, in the presence of said witness, and that the same was by me read over to her, and then signed by her in my presence.

And I further certify that at said examination of said witness there were present Messrs. A. B. Pittman & Murray F. Smith, of counsel for compl'ts, and Mr. A. M. Lea, of counsel for defendant.

Given under my hand the 20th December, A. D. 1881.
JAS. M. McKEE, *Examiner.*

98 I desire to correct the statement made in the foregoing deposition as to my age at the time of said sale; my exact age at that time was 16 years of age.
JULIA PORTERFIELD.

Endorsed: Filed Dec. 27, 1881. Jas. M. McKee, cl'k.

99 Afterwards, to wit, on Jan. 11th, 1882, the following notice and acknowledgment of service was filed, as follows:

In the Circuit Court of the United States for the Southern District of Mississippi. In Equity.

FLORIDA LAUGHLIN
vs. } 314.
J. D. MITCHELL *et al.*

To Florida Laughlin or Pittman, Pittman & Smith, her solicitors:

You will take notice that the defendant, J. D. Mitchell, desires the evidence in this cause to be taken orally, before one of the examiners of said court, in all things conformably to general equity rule No. 67.

A. M. LEA,
Solicitor for Defendant.

Service acknowledged.
June 11th, 1882.
PITTMAN, PITTMAN & SMITH,
Sol's for Compl't.

Endorsed: Filed Jan. 11, 1882. Jas. M. McKee, clerk.

100 And afterwards, to wit, on the 26th day of April, 1882, the deposition of Jefferson Davis, a witness for the complainant in said cause, was filed in the office of the clerk of said court, and is in the words and figures following, to wit:

101 In the Circuit Court of the United States for the Southern District of Mississippi.

FLORIDA LAUGHLIN *vs.* JOE D. MITCHELL *et al.*

Be it remembered that on the 1st day of April, A. D. 1882, at Vicksburg, Mississippi, pursuant to notice duly given, in the presence of Messrs. A. B. Pittman and Murry F. Smith, of counsel for complainant, and Mr. Lea, of counsel for defendant, personally appeared Mr. Jefferson Davis, a witness for the complainant in the above-stated cause, who, being by me first duly sworn and examined, deposed and said as appears by the deposition hereto annexed.

Interrogatories propounded by Mr. A. B. Pittman, of Counsel for Complainant.

Int. 1. Please state your name and present place of residence.

Int. 2. At what time did you first become acquainted with the complainant, Florida Laughlin, and with Joseph E. Davis, deceased, and what relationship did you bear to the latter?

102 Int. 3. State as fully as you can what were your opportunities of acquaintance with the relations which existed between Mrs. Florida Laughlin and your brother, Joseph E. Davis, dec'd, & of the character of the occupancy of the plantation known as Diamond Place from the time she first went to live there. Where did you live from 1840 to 1865, and where did your brother reside during that time? What was the character of the association between yourself and your brother? State fully such facts as may tend to show your opportunity for observation and information touching the matters in controversy in this suit.

Int. 4. Where were you when the Diamond Place was sold under deed of trust in June, 1846? Had you at the time or afterward knowledge or information from the parties concerned as to the terms of the purchase thereof at the sale, and as to any family arrangements which prompted the purchase or entered into it? State in a full manner your knowledge, information, and understanding touching the sale, the purchase by your brother, the con-

103 tinued occupancy by Mrs. McCaleb, and the subsequent history of the plantation and its occupancy. In answering this question please state fully your means of information, and distinguish when you speak from general repute or from more direct information.

Int. 5. State if you can what was done with the crops produced on said plantation during the year succeeding the sale, and give your means of information.

Int. 6. About what time was it that the $10,000 of your money was appropriated to the payment of your brother's debt to Wm. Laughlin and Co., and what was the occasion of that transaction?

Int. 7. Under what circumstances did they have your money in hand? Were they your factors? Were they the factors of your brother? Did he have any other factors at that time?

Int. 8. Was not the business of the Diamond Place at that time entrusted entirely to Wm. L. & Co. as factors, or was that

104 business also divided?

Int. 9. Did you ever learn then or afterwards how it came to happen that your brother was so largely indebted to Wm. Laughlin & Co., either from the latter or from your brother himself? If so state it.

Int. 10. Did you or not learn from your brother or from any correspondence between him and Wm. L. & Co. whether the claim of the latter was based on the advance made or acceptance given for the Diamond Place purchase?

Int. 11. During the occupancy of the Diamond Place by Mrs. Laughlin, in what way, if at all, did you understand that she then

considered and believed she was the beneficial owner of the property, and that she was the debtor of her father for its purchase-money? If such understanding on her part was made manifest by her actions, or by her words, publicly or outrightly spoken, set them forth to the best of your understanding.

105 Int. 12. You mentioned in a previous answer the circumstance that Mrs. L. had referred to the fact in your presence, or to you, that they were trying to repay the purchase-money of that place. Was such statement made to you or in your presence, secretely or in confidence, or merely incidental-y made?

Int. 13. What were your own impressions as to her status and occupancy of the property derived from your intimate acquaintance with the family? This inquiry relates only to the time preceeding the year 1858.

Int. 14. Before the execution of the lease in 1858, had any fact occurred, or any word *being* spoken to you or in your presence by your brother which tended to dispel your impression just stated, or which were at variance with it?

Int. 15. At what time and from whom and under what circumstances did you first hear of the execution of the lease made on Dec. 27, 1858, filed as an exhibit in this cause? What conversation, if any, did your brother have with you on that subject then or

106 afterwards? Were you in any way made acquainted with his views and wishes or purposes in respect to the Diamond Place about the time of the lease or shortly afterwards, or with the motives which impelled his action in the premises; if so, in what way did you become possessed of such information? If you had any conversation with Mr. Davis himself, which would tend to elucidate his own purposes or motives in exacting the execution of the paper referred to, set it out fully.

Int. 16. Examine the letters herewith submit-ed, numbered 1, 2, 3, 4, 5, 6, purporting to be letters of Joseph E. Davis, dec'd, and state whether you know his handwriting, and whether or not these letters were written by your brother, Joseph E. Davis. Are they in his handwriting, and is the signature his, in your opinion?

Int. 17. Examine the letter herewith presented, signed Florida, and state in whose handwriting is the letter and the signa-

107 ture, and in whose handwriting is the indorsemrnt of the words J. E. Davis from Florida, Sept 2, 1849.

Int. 18. Were you acquainted with the value of well-improved plantations, such as Diamond Place, in 1846; if so, what, in your opinion, was the reasonable value of the Diamond Place? If sold under favorable circumstances by voluntary act of owners on easy terms as to payment, what price might have been probably obtained?

Int. 19. Do you remember the value of slaves at that time; if yea, what was the reasonable value of average slaves?

Int. 20. It appears that the consideration of the sale of Diamond Place and of some fifty slaves was $28,531.00, payable on time, $15,036.94 on Dec., 1846, with the condition that upon payment of $\frac{1}{3}$ of said note at maturity and of interest on the whole, the balance

should be extended one year, and then on payment of another third and accrued interest the balance should be again extended for another year, and such arrangement was made as to give time
108 for payment of the other part. State whether that sum was grossly disproportionate to the real aggregate value of the land and slaves, or was it approximately the true value of both?

Int. 21. State whether or not Joseph E. Davis, dec'd, was a man of more than ordinary strong will and firmness, and whether or not, he was accustomed to exercise, and had the power of exercising, more than an ordinary degree of influence on persons who were subject to his influence by affection, relationship, or otherwise. If he was not a man of extraordinary strength of character say so, and if he was state it.

Int. 22. Do you remember what was the condition of your brother's health in Dec., 1859? If so state it.

Int. 23. Do you remember as to a sharp and serious attack of illness in the early part of Dec., 1859, or have you remembrance of it?

Int. 24. Can you state what was the character of the rela-
109 tions which existed between him and Mrs. Laughlin, and whether or not she looked up to him and venerated and loved him? State fully what you know about this.

Int. 25. Did Mrs. Laughlin ever bear any children or has she remained childless?

Int. 26. State anything else pertinent to this cause which will be of benefit to either of the parties hereto.

Cross-interrogatories by Mr. LEA, of counsel for defendant-:

X Int. 1. What is now Mrs. Laughlin's age?

X Int. 2. Is she not a lady of more than ordinary intelligence?

X Int. 3. Has Mr. Laughlin*g* or his wife any other means of support than the income derived from Diamond Place?

X Int. 4. In putting an estimate on the value of the Diamond Place per acre I suppose you meant the open land. Do you know how much land was opened in 1846?

110 X Int. 5. Were you the complainant in the case of Jefferson Davis *vs.* Bowmar & others, reported in the 55 volume of Mis. Report?

X Int. 6. In the printed argument of your counsel, Messrs. Pittman & Pittman, submitted to the court, I find the following language: "We speak the unwavering conviction of our distinguished client when we add that his revered brother never did and never could have violated this trust in fact or intent. It would have been at variance with every impulse of his nature, and would have been forbidden by every sentiment of honor and fidelity. His own conception of right and abhor-ence of fraud and infidelity touching such a trust voluntarily assumed and his own enlightened conscience would have wrought an estoppel beyond which no temptation, no sophistry, no influence of friends, no importunities of kindred even in the weakness of old age could have ever seduced him." Did that language accurately express your conception of your brother's character?

X Int. 7. Since that time has anything caused you to change your convictions in that regard?

111 Mr. JEFFERSON DAVIS, being duly sworn in answer to the foregoing interrogatories propounded by Mr. Alf. B. Pittman, of counsel for complainants, deposed as follows:

Ans. to 1st Int. Name is Jefferson Davis; I reside at Beauvoir, on the seashore of Mississippi.

Ans. to 2nd Int. I became acquainted with Florida Laughlin about 1821. I am the younger brother of Joseph E. Davis, deceased, and consequently the uncle of Mrs. Florida Laughlin.

Ans. to 3rd Int. The opportunity for intercourse with my brother was that of course of brother with each other, there being a great difference in our age. After the death of my father, which occurred in my boyhood, that brother occupied to me very much the relation of a parent. His daughter, Mrs. Florida Laughlin, resided for some years in the house of my father, and she and I as children went together to the county school. After we both went to school to the North, being graduated in the same year. I returned with
112 her from Connecticut to Kentucky, where I surrendered her to the charge of her father. Our relations to each other were more nearly like those of brother and sister than of uncle and neice. When I went into the army our correspondence continued. In the meantime, I should think about 1830, she was married to David McCaleb and went to reside on his property, known as Diamond Place. In 1835 I left the army and settled on a piece of wild land adjoining my brother's plantation and about 12 miles from Diamond Place. Thenceforward my opportunity for observation was the frequent intercourse between the two families. Between my brother and myself there existed the strongest bond of affection and mutual confidence, resulting in very free conversation on all which concerned either of us. With intervals of absence on my part, from positions held in public service, my residence was Briarfield, a place adjoining my brother's. I continued to reside there up to the war.

Ans. to 4th Int. At the date mentioned I was in Washington
113 city, where I had been from the preceeding December. The pecuniary embarrassment of David McCaleb had been the subject of occasional conversation between my brother and myself, and after the sale and purchase referred to my brother spoke to me of the transaction. I can only recall the general impression created by his speaking of Jonathan McCaleb as having embarrassed him in the purchase, from what he believed to be a desire to get possession of the property himself and to defeat his object, which was to purchase it in the interest of his daughter and her husband, David McCaleb. I do not know that he said anything to me as to the matter of repayment or any terms on which the place was to be permanently secured to those for whose protection I understood him to have purchased it. The interval of many years and the engrossment of my mind upon other subjects have natural-y left to me only a memory of the impression made upon me at the time, and

114 would render it utterly impossible for me to recite the exact language employed. David McCaleb remained in possession of the property after the sale and purchase, so far as I learned from general repute and circumstances, up to the time of his death, which occurred during the next year and while I was abroad in the military service of the United States. After my return from Mexico I found the widow residing on the property, and, so far as I could observe, in the control of it as fully as before. Subsequently the widow McCaleb was married to Mr. E. C. Laughlin, and, so far as I knew, the control of the property remained with them.

Ans. to 5th Int. Real-y I don't know anything about what was done with the crops. Mr. & Mrs. Laughlin merely mentioned to me that they were endeavoring to pay off the purchase-money, for which I understood my brother had made himself responsible by drafts on the house of William Laughlin & Co., and William Laughlin, the senior member of the firm, wrote to me that he had taken ten thousand dollars of my money to cover that amount of
115 my brother's indebtedness to him, but whether this was on account of the purchase of Diamond Place I cannot say.

Ans. to 6th Int. It was about 1850 or 1851 when William Laughlin was under a very heavy pressure and endeavoring to save himself from the bankruptcy which followed.

Ans. to 7 Int. He was the factor both of my brother and myself, but I believe the business was divided between that house and the house of Payne, Harrison & Co.

Ans. to 8 Int. My impression is that it was entirely with the house of Wm. Laughlin & Co.

Ans. to 9 Int. I never did learn the merit of Laughlin's claim from any statement of his. My brother was indignant that Laughlin should have represented him as a debtor and applied my money to the liquidation of such claims. It was the subject of an angry correspondence between them, copies of which to a greater or less extent have, I believe, been presented by E. C. Laughlin, and are probably retained by him. It may be proper for me to say
116 that in any controversy between my brother and anybody else I was on his side and not in the way of hearing complaints which outsiders might choose to bring against him.

Ans. to 10 Int. No, sir; I do not think either of them ever gave me any information on that point.

Ans. to 11 Int. It is one of those things about which I would not ask any questions. I found her in possession of the place exercising the rights of ownership, and was told that her husband, Mr. Laughlin, had added a number of slaves; no doubt a great deal more was said that I don't recollect.

Ans. to 12 Int. I think it was merely an incidental remark. There could have been no occasion for secrecy, and I had no motive to inquire into their financial affairs.

Ans. to 13 Int. Without ever asking a question of any of the parties, the circumstances left me always under the impression
117 that she held the property with the incumbrance of repayment of the purchase-money for all the period named.

Ans. to 14 Int. No, sir; I think nothing before that date.

Ans. to 15 Int. I cannot recall at what time or from whom I learned of the lease to which reference is made in the question. My impression is distinct that my brother never mentioned the subject to me, though long after that event I remember that in a conversation, in which his daughter, Mrs. Laughlin, was mentioned, that he said, with some asperity, she was given over to the Irish. Connecting the remark with what I knew before and have learned since I can see its bearing upon the main point of inquiry submitted. My brother had a very high regard for David McCaleb, and in every respect, except as a business man, he admired him. My opinion is that if David McCaleb had lived my brother would have desired that he and his wife should retain full possession of Diamond Place, and, therefore, my impression is that the change of
118 purpose manifested in the demand of the lease referred to was from a lower estimate on his part of Mr. Laughlin, and offence taken at his daughter's attention to the orphan children of William Laughlin, so close as to result in supposed neglect of her father.

Ans. to 16 Int. The letters now presented to me and numbered 1, 2, 3, 4, 5, 6, 7, 8, & 9 are in the handwriting of my brother, Joseph E. Davis; those not signed by him are in his handwriting, and those purpo-ting to be signed by him are in his handwriting, and it is his genuine siganture attached thereto. (Said letters are now filed as exhibits to above answer, marked Exhibits 1, 2, 3, 4, 5, 6, 7, 8, and 9.)

Ans. to 17 Int. I would say this letter was in the handwriting of Florida Laughlin, the complainant in this cause; I don't know by whom the endorsement was made. (Said letter filed as Exhibit No. 10 to this answer.)

Ans. to 18 Int. I should say one hundred dollars an acre; places less valuable were sold for more; the Diamond Place was
119 most favorably situated; it was then not only free from caving, but had a good landing at all stages of water; it was above anything except extreme overflow, and regarded as exceptional-ly valuable; it was something over a thousand acres, as I recollect; have forgotten the exact amount.

Ans. to 19 Int. All those who were efficient for labor I would say would be worth about $1,000 *per capita*.

Ans. to 20 Int. I think it was very far below the value, and also much below what must have been bid if there had been competition between Jonathan McCaleb and J. E. Davis, the only bidders, as I have understood, that were upon the ground. It may be well to state, what must have been inferred from my previous answer, that I was not present at the sale or in the State when it occurred.

Ans. to 21 Int. He was a man of very strong character; his influence over the members of his family was very great, but
120 exercised with gentleness, generosity, and moulded by an affectionate disposition.

Ans. to 22 Int. He had been subject to attacks which had something the character of epilepsy, but for a man of his age was more than ordinarily active, and his mind was in no degree im-

paired. I regarded him then, as I had for many years before, as the wisest man of my acquaintance; all of which may be accepted as the opinion of a brother who had received from him more valuable service, materially and intellectually, than from all the world beside.

Ans. to 23 Int. I was not in the State at the time. I was in Washington city, and do not remember it.

Ans. to 24 Int. I think he was proud of his daughter and tenderly attached to her, but they were alike in their character, which resisted opposition to the extent of putting themselves in the wrong where it occurred. I was so much absent from the State from 1846 to the date to which reference is made, 1858, that my knowl-
121 edge is less perfect in regard to their intercourse and personal relations than it otherwise probably would have been. During the whole of her life, from childhood, I thought she venerated her father so as to put his opinion above everybody else, and I never had occasion to doubt her love for him.

Ans. to 25 Int. No, she is childless.

Answer to 26 Int. I believe I have said everything which I can now recall bearing upon the case in issue.

Cross-examined by Mr. A. M. LEA, of counsel for defendant:

Ans. to 1 X Int. I think about seventy.

Ans. to 2 X Int. She is a very bright and well-informed lady.

Ans. to 3 X Int. Mr. Laughlin was a member of the house of Wm. Laughlin & Co. when he married. I understood he withdrew his funds when he married and invested them in negroes, who were added to the force on Diamond Place. Beyond this I have been told that he owned a house in Vicksburg, which gave him
122 some rent. Mrs. Laughlin had no other property than that of Diamond Place.

Ans. to 4 X Int. No, I think the whole place would have sold for that. I do not know how much open land there was on the place. I suppose it was about seven hundred acres.

Ans. to 5 X Int. Yes, sir.

Ans. to 6 X Int. Precisely, exactly, and I will add that I instructed my counsel not to institute the suit if it bore the character of attacking my brother's will; that I would rather lose the property.

Ans. to 7 X Int. Nothing.

JEFFERSON DAVIS.

And I, the said examiner, do hereby certify that the foregoing answers were written down by me in the presence of the said Jefferson Davis, Esq., and after having been read over by me in the presence and hearing of said Jefferson Davis, the same were by him signed in my presence. And I further certify that at the taking of said deposition it was expressly agreed between the counsel
123 for the respective parties that all exceptions as to the relevancy, competency, and materiality of the interrogatories or answers should be reserved.

Given under my hand this 1st day of April, A. D. 1882.
JAS. M. McKEE, *Examiner.*

Endorsed: Filed April 26, 1882. J. M. McKee, cl'k.

124 EXHIBIT No. 1 to Dep. of Jefferson Davis.

HURRICANE, *Sep. 12th*, 1849.

DEAR FLORIDA: Your letter by Jim of the 9th instant was duly rec'd. I am sorry to find you so much under the influence of the idle gos-ip, the opinion of others in such matters as relates to our moral conduct is right to respect. Such as would inquire into the private affairs of others is entitled to as much respect as is due to the cackling of geese, and we must feel humbled in our own estimation when we would allow them to exercise an influence upon our conduct or affect our happiness.

But, to come to the subject of your letter, I had apprised you that by will I had left the Diamond Place to you subject to the debt due upon it, which is now about twenty thousand, now due and payable to the house of W. Laughlin & Co. How much more may be rendered — the course — litigation I am unable to say. I certainly have in no way interfered in its management, except such aid as I
125 could give it, and am surprised to hear that Mr. Laughlin felt any apprehension or hesitation from the fear that I would not approve his acts. I expected from his want of experience that he would hesitate and when convenient consult me for his own advantage; but in all matter of evident propriety he would not wait for advice. You ask my opinion upon his, W. L's, return to New Orleans. This I am as little able to answer as any one. I suppose his business or interest in the house to be worth much more than the proceeds of the plantation. I do not know his means or the necessity for his continuance, the probable income of the house, or any other fact to enable me to form any opinion. Now, if Mr. L. has the means and so disposed to pay the amount due on the estate I will or you may, as the case may be, execute a mortgage to secure him in this advance. I mentioned in a former letter to you that from no want of confidence in Mr. L., but from a desire to secure you against any misfortune that even the most prudent are liable to. I thought it best, both for your interest as well as his, that your property
126 should be kept separate. I still think so. I cannot understand your sensibility in the matter. Things are in precisely the same situation they have been in for years past. I have interfered no further now than formerly. You no- any one else, as far as I know, thought you could be degraded by the dependence on your father. I expected Mr. Laughlin to exercise all the authority that was necessary and proper for the government of the place, and to act in all respects for your common benefit, and, so far as my wishes are concerned, prefer his remaining. The proceeds of the place will require time, patience, and economy to pay the debt, and if he could accomplish it at an earlier day by returning to N. O. it is a sacrifice you should make for his advantage, but it

would not do for you to accompany him before the season of yellow fever is over.

In conclusion, I would say I have no interest of my own that is to be effected. The interest is yours, and as it is likely to effect you only am I influenced. I would come up, but some of the
127 family are constantly sick, and the ride is rather a hard one to return the same day, yet I hope to see you here if I cannot come up. Send for horses if you are able to come and bring your friend with you before Mr. Laughlin goes. I wish his deposition in the chancery suit of Guion.

Caroline is sick to-day; had a chill and fever. Now, if anything further occurs before the arrival of the boat I will add it.

Affectionately, your FATHER.

Ex. No. 2 to deposition of Jefferson Davis.

HURRICANE, *Oct.* 3, '49.

DEAR SIR: Pressed — I have been for time, I should have written to you, but intended to go up as soon as the health of the family and my brother would enable me to do so. Yesterday was the first time that I felt it could be done with safety, and now the time is so close at hand that I must attend court (Monday next) that I must postpone it until afterwards. I am sorry to perceive a feel-
128 ing of dissatisfaction with you & Florida, nor can I account for any construction of my letter that implied want of confidence—certainly none was intended. Your remaining on the place is for the advantage of the place, but I could not request it, as it might interfere with a large interest elsewhere. I have no motive but your own interest. I have not ascribed to you any selfish motive, or even thought of it. The disposition I have made of the Diamond Place you are probably aware of by a provision in my will; this I think the best for many reasons, and which one of more experience would see. An obvious one is that, in the event of the death of one of you, the litigation with the relations of the deceased should be avoided. If such an event should happen in my lifetime it would by this means—but more of this when I see you. B. W. Focks is to have seven bales out of the first hundred, seven bales from the second hundred—that is, you take ninety-three and he has 7—so that if 300 is made he will be entitled to 21; if 350,
129 F.'s share will be 24½. Read this to him, as it is payable in kind I think him entitled to take and sell it to whom he pleases. I scarcely know what Freeland's object in the survey could be, as he gave no notice, but we shall learn at court. The health of the family is improving. Hoping to see you soon, I am

Y'r f'd, J. E. DAVIS.

E. C. Laughlin, Esq., Diamond Place.

Exhibit No. 3 to Dep. of Jefferson Davis.

HURRICANE, *Oct.* 3, 1849.

MY DEAR FLORIDA: I have your letter by the Magnolia, and as there is so much difficulty in making myself understood, I will not

attempt anything beyond the plainest matter. You say I have not requested Mr. L. to attend to matters generally. How
130 could I understand that he was willing to do so? Neither he nor you ever expressed to me any intention of remaining, nor did I think it necessary. I supposed he would act as he thought best. Now, who has shown a want of confidence—you in withholding all knowledge of your plans and objects, or me in omit-ing to inquire into them? I am pained to perceive any feeling of dissatisfaction, and such matters had better be reserved for personal conference. I did hope to see you before this, but the health of the family and brother Jefferson was such that I could not leave for a day. There is much that I would say to you, but time will admit of no more at present.

Y'r FATHER.

131 Ex. No. 4 to Dep. of Jefferson Davis.

HURRICANE, *Dec'r 11th*, '50.

DEAR SIR: I have your kind letter of to-day, and, as Joe will start early in the morning, I write to-night. I am so much occupied that I have not been able to attend to the lumber, and you must direct Joe what to get. I learned to-day that the chancellor had decided against us in the Guion suit. I have directed Harris to send me the decree, and upon examination will decide if an appeal be advisable. This evening I rec'd the inclosed letter from W. W. Laughlin, which you will examine and return to me by the first safe hands. Unless you can get the property I fear it will be an entire loss. I have yet made no business arrangements, and think it best to hold what we have until this can be safely done.

With love to Florida, accept the best wishes.

J. E. DAVIS.

E. C. Laughlin, Esq., Diamond Place, Miss.

132 Ex. No. 5 to Dep. of Jefferson Davis.

HURRICANE, *Jan.* 12, 1851.

DEAR SIR: Mr. Bateman is going up to-day, and I write by him. He will reach Diamond Place this evening and spend the night with you. I read a letter yesterday from Harris informing — that the decree in the chancery court was $4,525.61. Under all circumstances I expect we shall have to submit, as a sale of the property would be unpleasant. I have authorized Harris to give my obligation for the payment of the am't at 12 mo. with 8 p'r cent. int. I hope you are all well, and that we shall see you soon. With love to Florida, with the best wishes,

J. E. DAVIS.

E. C. Laughlin, Esq., Diamond Place, Miss.

133 Ex. No. 6 to Dep. of Jefferson Davis.

HURRICANE, *Nov.* 10*th*, '51.

DEAR SIR: I rec'd from Payne & Harrison the account of sale of the 48 bales of Diamond Place at 7½, which they write me they had

sent you and rec't of 30 bales. Jefferson returned yesterday morning, but has less information of the election than we have. The result of the election is still uncertain, but the chances are in favor of Foote. The family are all in the usual health. With love to Florida and the best wishes,

J. E. DAVIS.

Richmond is on his way to Dr. Mitchell, and is taking a colt to Lucy. If it should appear worse let him leave it with you or stay till morning; but I hope he will be able to get to V. Burg.

Mr. E. C. Laughlin, Diamond Place.

134 Ex. No. 7 to Dep. of Jefferson Davis.

HURRICANE, *July 24th*, '50.

DEAR SIR: Your letter of the 19th, with the accompanying papers, was rec'd. I hope you may continue to get on in your new vocation with no further troubles than are incident to the pursuit, and Florida, I hope, will find the difficulty of attending the sick diminished as her experience is enlarged. Laboring is the destiny of man, and he who attempts to escape from it is very certain to suffer in the end. We have some sick—indeed we always have—and I am preparing a place for them to repose in security until their health should improve so as to return to labor. The family are in usual health, except Caroline, who *is* indisposed for some time. I scarcely expect to leave home this season, with love to Florida,

Y'r f'd, J. E. DAVIS.

E. C. Laughlin, Esq., Diamond Place.

135 EXHIBIT No. 8 to Dep. of Jefferson Davis.

HURRICANE, *Jan'y 4th*, 1859.

I am sorry to receive such a letter from you, my dear child. You write as if I had deprived you of something that was yours, and speak of your being made a tenant at will. Now, it [is] exactly what the deed was intended to prevent. There is nothing now to prevent my putting an overseer on the place, or to prevent my executors from doing the same thing. If you think your situation is to be better- you may return me the deed. I will leave you in possession of the house and garden and appurtenances—with an income.

As to the statement of account, much of it has no relation to my purchase, the Guion debt and the Jacobs, &c., but you will recollect that nothing has been paid but from the proceeds of the place, which is mine. I leave you in the full enjoyment of the income for life. Now, who has the right to dispose of the earnings of his labor? I very much regret any feeling of the kind, and would still more re-
136 gret any publicity by taking possession of the place or exercising authority over it, but it seems no generosity or delicacy of conduct is satisfactory.

Your, FATHER.

137 EXHIBIT No. 9 to Dep. of Jefferson Davis.

JACKSON, *Jan'y* 13, 1848.

DEAR SEARLES: I am sorry you were not here on Tuesday. Every one seemed pleased at the result of the senatorial election, and I was fearful the feeling might evince a triumph galling to the vanquished, but no one seemed to so regard it. I expected some letters from Messrs. W. Laughlin & Co. as to the amount paid to Jacobs for D. McCaleb & included in his deed of trust to secure you. If you have an account of it send it to me as necessary to my answer in the suit of Guion and others. I inclose you some letters for the Hurricane, which please send by the Magnolia. Some confusion, I fear, will grow out of the recent decision of the supreme c't in R. road assignment.

With the best wishes, accept the regard of your friend,

J. E. DAVIS.

C. J. Searls, Esq., Vicksburg, Miss.

138 EXHIBIT No. 10 to Dep. of Jefferson Davis.

DIAMOND PLACE, *Sept.* 15, 1849.

MY DEAR FATHER: The Magnolia did not stop on her way up the day before yesterday, and consequently I did not receive your letter in time to answer it. I regret this the more as I see you still misunderstand me with regard to the subject upon which I wrote to you. Unwillingly, therefore, I again attempt to make myself clearer, but if it only concerned myself I would not trouble you further, but I seem to have misled you in same into thinking that Mr. Laughlin wished a joint title to the property—a thing he never even dreamed of. All he has ever said upon the subject was totally averse to such and arrangement.

I had, either with regard to your intentions or the feelings of my relations, but simply that as my husband, and therefore natural guardian of all that I had or could have, — he would be placed in a more independant light in the eyes of others than if regarded only as your agent on a place to which neither of us had any known claim. Besides I know that the place could only be a trouble
139 to you, for you have too little time to give to it, and you can easily see that with no one but an overseer upon it, who generally regards nothing but his own interest, there would every year as much be lost as gained. This year we have lost more than half of our stock, twenty-one horses among the rest. We have scarcely half the corn necessary for the coming year. We have mules to buy, and many other things require attention which you, my dear father, cannot be expected to give. To free the place from debt, no matter how great, if not beyond a possibility to meet, Mr. Laughlin has both the will and economy to accomplish. We have enough to live on here without touching the proceeds of the place. His town property yields quite as much as our simple way of living would require until we had a right to more, which neither of us could feel to be the case as long as we were in debt. We both know that all you

propose is for our benefit; nothing can affect that conviction, but others have imagined that you withheld the title from me because you were afraid to trust him with the management of the
140 place. Might he not, sensitive as he is, even think so, too? He likes the country, and for my sake would do far more than remain here, even if he did not. No, neither of us care for riches: and independant home, beyond the speculation of any one, is all I ask. I have lived too long here easily to become attached to another place, especially a city. I care too little for society to be otherwise than sorrowful if separated from the few I do love, and Mr. Laughlin is necessaryly away the greater part of the time. There are many other advantages in being in the country to one [of] my disposition, and I would endure many inconven-e-ces to share them. I hope, my dear father, you now understand me, and, what is of no less importance to me, that you also understand Mr. Laughlin. He wishes to remain here, because he thinks I will be happier. By economy we can pay the debt, and such economy we will exercise; but, then, he wishes your unlimited confidence. Mr. Laughlin is too noble and true minded—too disinterested—to care whether the property was
141 in my name or his in any ordinary case; in this case he has often said he would only live here in case it was secured to me, for he takes the same view of the matter as you do, and thinks it safest to guard as much as possible against the missfortunes that can affect others as well as ourselves. In my obscure way of writing I often mislead you with re-ard to myself. I am always pained to see it, but still more so when I think I have injured, in your good opinion, one so much more deserving as Edmund is. May God always bless you and him.

Affectionately, your daughter,

FLORIDA.

J. E. Davis from Florida, Sept. 2, 1849.

And on the 26th day of April, A. D. 1882, the deposition of Mrs. Varina Davis, a witness for complainant in said cause, was filed in the office of the clerk of said court, and is in the words and figures following, to wit:

142 In the Circuit Court of the United States for the Southern District of Mississippi. In Equity.

Mrs. FLORIDA LAUGHLIN *v.* JOE D. MITCHELL *et al.*

Be it remembered that on the 15th day of April, A. D. 1882, at Biloxi, in said district, in the presence of Mr. A. B. Pittman, of counsel for complainant, and Mr. A. M. Lea, of counsel for defendant, personally appeared Mrs. Varina Davis, a witness for the complainant in the above-stated cause, pursuant to notice duly given, who, being by me first duly sworn and examined, deposed and said as appears by the deposition hereto annexed.

Circuit Court United States, So. District Miss. In Equity.

FLORIDA LAUGHLIN *vs.* JOS. D. MITCHELL *et al.*

Interrogatories propounded to Mrs. Varina Davis, a witness examined before Commissioner James McKee, in behalf of said complainant.

143 Int'y 1. State your name place of residence, and, if connected with either of the parties to this suit, by marriage or otherwise, state how you are so connected, when and where did you first become acquainted with each of the parties, Mrs. Laughlin and Jos. D. Mitchell; whose residence was the Hurricane Place and whose the Diamond Place at that time.

Int'y 2. When and where did you first become acquainted with Jos. E. Davis, deceased; were you or not intimately acquainted with him and his household? Set forth fully and in detail your opportunities of acquaintance and association with the said Jos. E. Davis and with the members of his household, his and your place of residence, and the several periods of time during which such opportunity of association existed.

Int'y 3. Where were you at the time of the sale of the Diamond Place on or about June 15, 1846, under the deed of trust?

Int'y 4. What was the reputed character of her occupancy of the Diamond Place; who was the reputed owner of said plantation;

144 what was the general understanding among her neighbors as to the real beneficial ownership of the Diamond Place as distinguished from the legal title? By "beneficial ownership" in this connection is meant the real equitable ownership, as distinguished from the mere legal title. The legal title and the beneficial ownership may or may not reside in the same person.

Int'y 5. Explain more fully what you mean when you say you never heard a question of Mrs. Laughlin's ownership.

Int'y 6. Did Jos. E. Davis, at any time during her occupancy of said place after the sale, speak to you, or in your presence, relative to Mrs. Laughlin's home, her interest or right there, the nature of her occupancy, the character of his own interest therein, or otherwise make expressions pertinent to the controversy in this suit? If so, set forth the same fully.

Int'y 7. Did you, at any time, hear Mr. Jos. E. Davis speak of this matter after the execution of the lease or deed in 1858; and, if so, do you know, from such conversation with him, at what time

145 he concluded to claim and retain the place as his own; do you know from such conversations what causes moved him to that course or were influential in impelling him to that course?

Int. 8. State anything else you know pertinent to this cause as fully as if particulary inquired about.

Cross-interrogatories:

X Int. 1. State as near as you can the date of this conversation with Mrs. Jos. E. Davis, and the place where it occurred. How long after this did Mrs. Davis live?

X Int. 2. Who composed the household at Hurricane at this time?

X Int. 3. You have spoken of complaint made by Mr. Jos. E. Davis at the extravagant manner of living by Mrs. Laughlin. What, if anything, do you know on this point? Did Mr-. Laughlin at this time and during the period about which you have been examined live extravagantly; and, if so, to what extent?

X Int. 4. Have you seen Mrs. Laughlin recently, and where
146 does she now reside? Has she any other place of abode than the Diamond Place?

X Int. 5. How old is Mrs. Laughlin?

MRS. VARINA DAVIS, a witness for the complainants, being duly sworn, in answer to the interrogatories and cross-interrogatories propounded, says:

Ans. to Int. 1. My name is Mrs. Varina Banks Davis; residence, Beauvoir, Harrison Co., Miss. I am an aunt by marriage to Mrs. Laughlin and a grandaunt by marriage to Mr. Joseph D. Mitchell, I don't remember when I first became acquainted with Mrs. Laughlin at Diamond Place; I was a small child at the time. The first time I distinctly remember her was in January, 1844. In February, 1844, when Mr. Mitchell was a small child, I first met him at the Hurricane plantation. The Diamond Place was at that time the residence of Mrs. McCaleb; the Hurricane plantation the residence of Mr. Joseph E. Davis.

147 Ans. to int. 2. I think when I was two [or] three years old I met Mr. Joseph E. Davis and can vaguely remember him. From that time on until I was seventeen years old I met him, I think, about once a year. My mother and father were exceedingly intimate with Mr. Davis, and whenever he came to town he came to the house of my mother and took a great interest in me. When I was about grown I went to the Hurricane by invitation of Mr. Davis. I staid about a month at Mr. and Mrs. McCaleb'-, now Mrs. Laughlin, and then went to the residence of Mr. Davis at Hurricane. I was treated quite as one of the children. That was 1844. I became engaged to Mr. Jefferson Davis that spring. The year after was married and went back to the Briarfield to live. I was a greater part of the time at the Hurricane. Mr. J. E. Davis did not like the idea of our living down where we were, and insisted on our living at the Hurricane. So we were there a good part of the time, and when not there some of the family at the Hurricane
148 were with us, so that we never lost the current of events. Mrs. McCaleb lived 13 miles from us; she and I were particular friends and I used to be there quite often—sometime- I staid there a week or ten days at a time, or sometimes longer, perhaps 4 or 5 weeks at a time—this while Mr. Davis was absent in Mexico, or during the short sessions of Congress, when I did not go with him. We were married in Feb'y, and in the November following—that was in 1845—we went to Washington. The July following he received notice that he had been elected to command the 1st Miss. regiment in the war in Mexico. He resigned his seat in the House

of Representatives and we returned home immediately. In his absence I spent a good deal of my time with Mrs. McCaleb and at the Hurricane, with an occasional visit to Natchez to my parents. I was at that time in constant correspondence with Mrs. McCaleb, Mr. Joseph E. Davis, and Mrs. Joseph E. Davis, and with other members of the family that were living there at the time. From the time I was married until
149 the autumn of 1845 Mr. Davis (my husband) was absent a good deal in making a canvass of the State. During that time I was more frequently at Mrs. McCaleb's and at the Hurricane than I should have been were he at home. From the time we returned from Washington, in July, 1845, for about a year, Mr. Davis was away from home on duty in Mexico, so that I spent much of my time at the Hurricane and Mrs. McCaleb's. My brother-in-law, Mr. Joseph E. Davis, was very fond of talking to me, and used to call me in to read to him. In 1847 my husband went to Washington alone; in the summer following (1848) Mr. Joseph E. Davis, his wife, and myself went on to Washington by carriages much of the way. Mr. Davis (Joseph E.) talked to me very freely about his affairs. Between Mr. Joseph E. Davis and myself there was much in common—congeniality of taste—which led him to talk freely to me of his affairs and other matters. He conferred with me more freely of matters than I think he knew of. We were so much together
150 that he unconsciously spoke of his most private affairs. He was very prone to give expression of his opinion of any of the family to any of the family with whom he was at the time. He was not [at] all reticent with the ladies of his family, and whatever was in his mind he was very apt to tell us—he was so much with us ladies.

Ans. to Int. 3. I was in Washington then. I was at home within about a month from that time. As soon as Mr. Davis left Washington I left with him. When he went to Mexico I remained at home. As soon as he was gone I went down to the Diamond Place to see Mrs. McCaleb; I suppose I stayed there three weeks or a month. This was about the latter part of July, 1846.

Ans. to Int. 4. I have no idea of its b-longing to any one else than Mr. McCaleb; I never heard that it b-longed to any one else but him; that was when I first went there. While Mr. McCaleb was living I heard frequent mention of his being embarrassed—not directed
151 to me, but in conversations between Mr. & Mrs. McCaleb in my presence as to the necessity of economy, &c. Subsequent to the sale I never heard a question of Mrs. McCaleb's ownership of the place, but on the contrary heard complaints made that Mr. Johnathan McCaleb had run the property up on Mr. Joseph E. Davis, as it was supposed, to secure it for the family of the McCalebs, and expressions of disappointment on the part of Mrs. McCaleb in the conduct of her Uncle Johnathan, and several times I heard Mr. Joseph E. Davis express annoyance at his course. So little was it expected that the Hurricane should pay for the Diamond Place that the little extravagances of Mrs. McCaleb's housekeeping were commented upon as likely to render a call upon Mr. Joseph E. Davis necessary

in making the stipulated payments. Mrs. McCaleb was, I think, more sensitive as to Mr. Johnathan McCaleb's effort to bid in the property, because she was childless and might naturally expect the property so bid in to go to Mr. McCaleb's family in the event
152 of its being bought in by Mr. Johnathan McCaleb, and this feeling was probably intensified because the embarrassment to the estate had been created in a great measure by debts contracted for a member of the McCaleb family.

Ans. to Int. 5. I mean that I never heard any one else mentioned as the owner of the place for years after the sale: never until I heard of the execution of the deed. I heard my brother-in-law find fault with her administration of the place, and say she ought not to have a place if she did thus & so, &c.; but I never heard him question her right to the place. I could not give the sums that I heard were paid, but one January a year or two after it was bought, when Mrs. Laughlin was spoken to as to the extravagance of her journey to New Orleans, she became very indignant and said they were not backward in their payments, and that [it] was nobody's affair.

Ans. to Int. 6. Mr. Joseph E. Davis spoke of the occupancy
153 as I might speak of your occupancy of your own home. He never did indicate to me any doubt of Mrs. Laughlin's right to Diamond Place. He did many times express anxiety lest the Diamond Place crops should not pay the full amount that might be due—lest he might be called upon to supplement it. He always spoke of it as a debt incurred for her benefit. Whenever he went to Diamond Place he would return very angry at what he thought was the mismanagement there. I am sure if he felt he owned the place he would have put a manager there to correct what he thought the mismanagement. If at that time he had matured an intention to claim the place, I am sure he would have put a manager there.

Ans. to Int. 7. No: I never heard Mr. Joseph E. Davis speak of it. My confidential relations towards him had ceased and I never heard him mention it, but I have heard his wife mention it very often. At that time I heard him mention a disagreement with Mrs. Laughlin, which I knew by what his wife told me had reference
154 to the property, but he did not explain it to me. He expressed simply in general terms that his daughter had not acted dutiful-y towards him. It arose about in this manner: He offered to pay my expenses and that of my children to Europe if I would go with him; I told him I did not want to go, but thought his daughter, Mrs. Laughlin, would. He said he did not wish her to go. I think he said she had opposed him.

Ans. to 8th Int. I can only add the following circumstance: My husband had in the hands of Mr. Wm. Laughlin, a commission merchant in New Orleans, the sum of ten thousand dollars. Mr. Laughlin had failed in business, and in the spring of 1851 Mr. Laughlin, in answer to a letter from me about other matters, volunteered the statement that he had so arranged as not to let my husband loose the money; that he had transferred it to the account of my brother-in-law, Mr. Jos. E. Davis, who, Mr. Laughlin stated, owed

him, I think, thirteen thousand dollars. I saw Mr. Joseph E. Davis and told him what Mr. Laughlin said as to this indebtedness.
155 Mr. Joseph E. Davis indignantly denied it, and said that he did not owe Mr. Wm. Laughlin a cent; that he was never behind with his commission merchant. I also know that Mr. Joseph E. Davis was troubled with the idea that the Laughlins might become heirs of the Diamond Place property in the event of Mrs. Laughlin's death. He had become very much embittered against the Laughlins—to such an extent that he got angry when they were mentioned. My sister-in-law, Mrs. Joseph E. Davis, told me about the signing of the lease of 1858 by Mrs. Laughlin, and she said that she thought it was an act of great injustice to Mrs. Laughlin; that had she been in her place she would have died before she would have signed it. I never had a circumstantial account of the signing of the lease of 1858 by Mrs. Laughlin, or from any one else but Mrs. Joseph E. Davis, and the circumstances as she detailed them to me are about as stated in the bill filed in this case. I was struck with that circumstance when I read the bill. I have
156 heard Mr. Joseph E. Davis say that if his daughter, Florida, should die, he supposed there would be an "Irish settlement" at the Diamond Place, referring to the Laughlins. I mention it just to show the spirit with which he spoke of Laughlin. The conversation between my sister-in-law and myself, in reference to the signing of the lease by Mrs. Laughlin, occurred during the year 1859—I think in the autumn.

Cross-examination by Mr. A. M. LEA, of counsel for defendants:

Ans. to X Int. 1. As near as I can recollect I think it was the autumn of 1859. It must have taken place at Hurricane or Briarfield. I think Mrs. Joseph E. Davis died in 1863.

Ans. to X Int. 2. Mrs. Horatio Harris, Mrs. Amanda Bradford (I think), and Joe and Miss Lize Mitchell; I don't remember anybody else that was there at that time.

Ans to X Int. 3. I don't think Mrs. Laughlin lived extrava-
157 gantly. I think the extravagances spoken of were small affairs. The particular extravagance I heard spoken of was, I believe, about a matter of champaigne at a dinner party. As I look back at it now I don't think Mrs. Laughlin was an extravagant person.

Ans. to X Int. 4. I have not seen her for years—not since the year 1868. She lives at Diamond Place; don't know whether she has any other place of abode. She was for a time at the springs, but do not know whether as a residence or not.

Ans. to X Int. 5. I think about 72 years old.

VARINA DAVIS.

158 And I, the said examiner, do hereby certify that the foregoing answers were written down by me in the presence of the said Mrs. Varina Davis, and after having been read over by me in her presence and hearing were by her signed in my presence. And I further certify that at the taking of said deposition it was ex-

pressly agreed by the counsel for the parties to this suit that all exceptions as to the relevancy, competency, or materiality of any of the interrogatories or the answers thereto should be reserved.

Given under my hand this 15th April, 1882.

J. M. McKEE, *Clk.*

Filed April 26, 1882.

J. M. McKEE, *Clk.*

And on the 26th day of April, A. D. 1882, the deposition of W. W. Lord, a witness for complainant, was filed in the office of the clerk of said court and is in the words & figures following, to wit:

159 In the Circuit Court of the United States for the Southern District of Mississippi.

FLORIDA LAUGHLIN *v.* JOE D. MITCHELL *et al.*

Be it remembered that on the 27th day of March, A. D. 1882, pursuant to notice duly given, before the undersigned examiner in equity of said court, at Vicksburg, in said district, in the presence of Messrs. W. B. Pittman and Murray F. Smith, of counsel for complainant, and Mr. A. M. Lea, of counsel for defendants, personally appeared W. W. Lord, a witness for the complainant, who, being by me first duly sworn and examined, deposed and said as appears by the deposition hereto annexed:

160 Dr. W. W. LORD, being duly sworn, in answer to interrogatories propounded to him answers as follows:

Interrogatories by compl't's attorneys:

Int. 1. What is your name, residence, and occupation?

Ans. W. W. Lord. I am a minister of the Protestant Episcopal Church; residence, Cooperstown, New York.

Int. 2. Where did you reside prior to 1860, about the years 1855, '6, '7, '8, & '9?

Ans. At Vicksburg. I was then rector of Christ church.

Int. 3. Are you acquainted with Mr. E. C. & Mrs. Florida Laughlin, & how long have you known them?

Ans. I am acquainted with them; have been since some time in 1854 to the present time.

Int. 4. Were you acquainted with the late Mr. Joseph E. Davis?

161 Ans. I was.

Int. 5. Will you please state wheather or not you were sent for *on* consulted by Mrs. Laughlin about the year 1858?

Ans. I was certainly consulted, and my impression is I was sent for.

Int. 6. Will you please state what was the purpose or desire of Mrs. Laughlin in sending for or wishing to consult with you, and will you also please state what was her mental condition at that time?

(Interrogatory objected to by counsel for deft's.)

Ans. It was with general reference to an interview she had had with her father & the result of that interview. She was in a very distressing condition of mind. She seemed to think that a case had arisen where her natural affection for her father had led her to commit an act of great injustice to herself & Mr. Laughlin.

162 Int. 7. Did she inform you what act it was that she had performed which had produced this mental distress of which you have spoken? And, if she did, please state what act that was.

Ans. She had signed a paper which conveyed Diamond Place to her father & gave her only a life occupancy of it. She had recently returned from Hurricane, where her father was sick.

Int. 8. Are you familiar with the general reputation as to the purchase of Diamond Place by Mr. Joseph E. Davis when it was sold for the debts of Mrs. Laughlin's former husband? And, if yea, please state what was generally said and believed and accepted as to the status of said purchase and the intention of said Joseph E. Davis in making the purchase.

Ans. So far as I heard anything on the subject it was to the effect that on the day of the sale other competitors withdrew for the

163 reason that Mr. Joseph E. Davis wished to bid the place in for his daughter, or in the interest of his daughter, Mrs. Florida McCaleb. Mr. Johnathan McCaleb, who was minded to bid for it, withdrew; that is, he did not bid. I think I can safely say that the general reputation & belief was that Mr. Joseph E. Davis bid in the place for the benefit of Mrs. Laughlin.

Int. 9. Has Mrs. Laughlin ever had any children?

Ans. Not to my knowledge; I am sure she has not.

Int. 10. Are you or not acquainted, or did you or not know of Mr. Joseph E. Davis' feelings towards Mr. Laughlin? And, if you do, please state what they were.

Ans. I think he was in some manner prejudiced against Mr. Laughlin. My impression is that he thought him an incompetent manager of the estate. I did not learn this from Mr. Davis;

164 do not remember*ed* to have ever talked with Mr. Davis about him. Any impression I may have derived, I think came mainly through Mrs. Laughlin, and statements which she made to me of what her father had said to her. Two remarks remain in my mind—one that she had surrounded herself with a parcel of Irish, and that she had given him, Joseph E. Davis, up for the Irish, alluding to three nephews and a niece of Mr. Laughlin, who was then living on the place with Mr. Laughlin.

Int. 11. Were you pretty familiar with the character of Joseph E. Davis, & was he or not a man disposed to be very intolerant of opposition on the part of any members of his family or relatives?

Ans. It struck me that he was; I think that was his common reputation—a man of very arbitrary disposition, disposed to rule things; that was the way he struck me.

Int. 12. Were you, or not, familiar with Mrs. Laughlin's feelings towards her father prior to the events you have

165 nar-ated?

Ans. I was; her devotion to him was exceptional; she was

perfectly devoted to her father. Her devotion to him was exceptional in this respect, that it is rare to see a person in middle age retain so much filial feeling and such enthusiastic sentiments towards her father. I have frequently heard her use the expression that he was one of the noblest men that ever lived. She often spoke of his goodness to her. His goodness to her and her devotion to him was a frequent theme of conversation with her amongst her friends.

Int. 13. Can you state whether or not there was any change occurred in the feelings of Mrs. Laughlin towards her father after the performance of the act above spoken of?

Ans. I cannot say upon this point.

Int. 14. Can you state what was the feelings of Mr. E. C.
166 Laughlin towards Mr. Joseph E. Davis?

Ans. I think he shared in a great degree the admiration & affection of Mrs. Laughlin for Mr. Davis. He struck me as being very much under the influence of Mr. Davis. Everything showed that he looked up to Mr. Davis constantly. In temper & disposition he is not combattive & self-assertive, & is disposed to avoid troubles with his fellow-men.

Cross-examined by Mr. A. M. LEA, of counsel for defendants:

X Int. 1. In int. No. 8 you are questioned as to general reputation concerning the purchase of the Diamond Place by Mr. Joseph E. Davis. Is not your knowledge on that subject derived almost exclusively from hearing the matter talked of in the family?

Ans. I would say mainly, but I think not exclusively. The manner in which the family spoke of it was as a thing well
167 known, not by way of asserting it against contradiction or any other view of the thing.

Re-examined by Mr. PITTMAN, of counsel for complainant:

Int. 1. At the time you spoke of being sent for in the year 1858, do you remember any expression of Mrs. Laughlin's, or anything that occurred tending to show her distressed condition of mind.

A. She said but for her religion she would throw herself into the river; that she never would have performed the act but for her belief that her father would die if she did not, and — if I, Dr. Lord, thought that suicide under such circumstances as she was placed in was not justifiable or might not be considered justifiable.

W. W. LORD.

And I, the said examiner, do hereby certify that the foregoing interrogatories and answers were written down by me in the
168 presence of said W. W. Lord, and after having been read over by me in the presence and hearing of said W. W. Lord, the same were by him signed in my presence.

And I further certify that at the taking of said deposition it was expressly agreed between counsel for complainant and defendants

that all exceptions to the relevancy, competency, and materiality of the interrogatories and answers were expressly reserved.

Given under my hand this 27th day of March, 1882.

JAS. M. McKEE.

And on the 26th day of April, A. D. 1882, the deposition of J. U. Payne, a witness for complainant in said cause, was filed in the office of the clerk of said court, and is in the words and figures following, to wit:

169 In the Circuit Court of the United States for the Southern District of Mississippi. In Equity.

Mrs. FLORIDA LAUGHLIN *vs.* JOE D. MITCHELL *et als.*

Be it remembered that at New Orleans, La., on the 14th day of April, A. D. 1882, pursuant to notice duly given, in the presence of Mr. A. B. Pittman, of counsel for complainant, and A. M. Lea, Esq., of counsel for defendant, personally appeared Jacob U. Payne, Esq., a witness for the complainant in the above-styled cause, who being by me first duly sworn and examined, deposed as appears by the deposition hereto annexed.

170 *Deposition of Jacob U. Payne.*

Interrogatories propounded by Mr. Pittman of counsel for complainant.

Int. 1. State your name, residence, and occupation; how long you have engaged in that business and where were you so engaged.

Ans. Name is Jacob U. Payne; residence, New Orleans; occupation, commission merchant; have been 42 years engaged in that business.

Int. 2. Were you or not at any time the cotton factor of Joseph E. Davis, now deceased? And, if so, state approximately the dates or years when you bore that relation to him.

Ans. I was the merchant of Mr. Davis from a short time after I came to this city until his death.

Int. 3. Examine the annexed accounts marked "A," "B," & "C," purporting to be a copy or duplicates of accounts rendered by the firm of Payne & Harrison to Jos. E. Davis. Were you the Payne of that firm? Are these accounts true and correct copies of actual accounts taken from your books and rendered to Jos. E. Davis?

171 Ans. to Int. 3. Said accounts marked "A," "B," & "C" are copies taken from my books of accounts rendered to Mr. Davis. I am the Mr. Payne of the firm of Payne & Harrison therein mentioned. Said accounts "A," "B," & "C" are herewith filed as exhibits to this answer.

(Counsel for defendants objects to the introduction of the statement of the accounts because they are secondary evidence of their contents.)

The witness now adds to his answer "that said copies are taken from the press copies of the accounts rendered to Mr. Davis, and that he has compared them with the books, and that they are correct.

Int. 4. Examine the several accounts of sale herewith exhibited, and state whether or not the same were rendered by your firm, as they purport to have been on their face?

Ans. The accounts of sale herewith handed me, marked Exh's D^1, D^3, D^4, D^5, D^6, D^7, D^8, D^9, D^{10}, & D^{11} (ten in all), are accounts of sale made by our house and rendered by us to Mr. Davis. Here is one sale in the account marked "A," for which there is no account sales among the exhibits above spoken of; said sale was of 25 bales of cotton.

172 Int. 5. State whether you had any knowledge of a transaction by which Messrs. Laughlin & Co., about the time of their failure, debited Mr. Jefferson Davis' account to Jos. E. Davis' account for a large sum of money, thus taking the credit balance of the former to reduce the debit balance of the latter on their books. If you heard of the matter at the time, state how you came to hear of it, and from whom. Do you or not know whether Jos. E. Davis acknowledged the claim made by Laughlin & Co. that he was indebted? Did you call on Messrs. Laughlin & Co. about that business? State all you know about it and your means of information.

Ans. I had no personal knowledge of the business of Mr. Laughlin whatever with Mr. Davis until after Mr. Laughlin's failure, except that after Mr. Laughlin's failure I was requested by some one—I think Mr. Jefferson Davis—to go and examine the books of Mr. Laughlin, and examine the credits and debits of the two Mr. Davis-s. The object was to get the debit on those books against Mr. Joseph E. Davis settled by the credits then on the books in favor of Mr. Jefferson Davis, as I recollect.

173 Int. 6. Was Mr. Jos. E. Davis a man of wealth & means or otherwise? In his dealings with you was his accounts habitually in credit or otherwise?

Ans. He was a wealthy man, usually made large crops, and had money to his credit, or something to represent it. Sometimes his accounts would show a debit when we had his cotton on hand unsold.

Int. 7. What was the character of the personal relations which existed between yourself and Mr. J. E. Davis?

Ans. We were upon very good terms; might call them friendly relations, I suppose; had known each other a good many years before my coming here.

Int. 8. Had you any intimation of Mr. Davis' dealings with Laughlin & Co. before the circumstance narrated by you just now? Was it a matter of surprise to you that Laughlin and Co. had a claim against him for so large a balance, or was it consistent with your knowledge and understanding of the dealings & condition of Mr. Jos. E. Davis that such balance should stand against him on their books at that time?

174 Ans. to Int. 8. I think I will have to say I can't give you any opinion about that. I did not know that he had such an account, and can't remember what impression it made on me. I suppose that McCaleb and wife had been shipping the cotton of

Diamond Place to Mr. Laughlin and that Mr. Davis permitted the cotton to be continued to be shipped to Laughlin until his failure; this is a mere inference I draw from circumstances.

Int. 9. State any other facts, within your knowledge, pertinent to this case as fully as if you were particularly interrogated thereunto.

Ans. I don't know anything more I could say that would benefit either side.

Cross-interrogatories:

X Int. 1. Were these account sales rendered directly to Mr. Jos. E. Davis, or were they not sent, in the first instance, to Mr. E. C. Laughlin; what, if any, knowledge have you on this point?

Ans. They must have been sent to Mr. J. E. Davis, because they were kept in his account, and we always sent acc't sales to persons in whose names the accounts were kept.

175 X Int. 2. Had Mr. Davis any other factor than your firm from 1853 until his death?

Ans. I don't know that he had an account with any other factor.

X Int. 3. Did Mr. E. C. Laughlin ever have an account with your firm?

Ans. I think not, but I do not state positively.

X Int. 4. Were your firm in the habit of cashing drafts drawn on you by Mr. Davis, in favor of Mr. E. C. Laughlin, on the proceeds of the Diamond cotton during this period—that is, from 1851 to 1853?

Ans. I could not say anything about that except by examination. We would have paid them if he did so, but I can't state from memory. As far as our books show the account, Ex. "A," "B," & "C" show all drafts drawn by Mr. Davis on account Diamond Place cotton.

X Int. 5. When and from whom did you first learn that Mr. Davis had purchased the Diamond Place?

176 Ans. to X Int. 5. My belief is it was from the house of Payne & Green, at Warenton, composed of my brother, A. M. Payne, & John J. Green.

X Int. 6. Were the persons from whom you derived this information at the sale?

Ans. I can't say positively, but think that one of them was; I was advised that some one of them was present looking after their interests.

X Int. 7. Are the members of the firm of Payne & Green now living, or either of them?

Ans. No; none of them; I don't believe there is a clerk living.

Redirect examination:

Int. 1. Please examine your books from the time of the closing of the account with "Diamond Plantation," J. E. Davis, in account with Payne & Harrison, up to the breaking out of the war, and ascertain, if you can, whether the cotton from the Diamond Place was shipped to your house during any part of that time, either under an account with E. C. Laughlin or Mrs. Florida Laughlin or Jos. E. Davis

177 himself. If you find that such cotton was received by your firm set forth a statement from your books of the amount, nett proceeds, & disposition of the same, so far as your books show. If they were credited directly to the account of Joseph E. Davis set forth a statement of the amounts and dates.

Ans. to redirect Int. 1. After examining my books I find no trace which will enable me to answer further than I have already done.

J. U. PAYNE.

And I do further certify that the foregoing answers were written down by me in the presence of the said Jacob U. Payne, and, after having been read over by me in the presence and hearing of said Payne, were by him signed in my presence; and I further certify that at the taking of said deposition it was expressly agreed by the counsel of the respective parties that exceptions as to the relevancy, competency, and materiality of any of the interrogatories or answers should be reserved.

Given under my hand this 14th April, 1882.

JAS. M. McKEE, *Examiner.*

178 EXHIBIT "A" to dep. of J. U. Payne.

J. E. Davis in Account with Payne & Harrison.

Diamond Plantation:

1851.							
Nov. 19.	To invoice bagging, rope, & twine			238	85	153	8 09
1852.							
Jan'y 31.	" " coffee, sugar, & ½ box tobacco			47	87	80	86
March 30.	" paid d'f't fav. Jno. I. Guion, 2,897 70, with int. 4,571			2,943	41	21	13 72
April 20.	" balance of interest acc't to credit						135 12
" "	" put to credit of J. E. Davis' ac.			2,270	57		
	Dollars			5,500	70		157 79

CREDITS.

1851.							
Nov. 8.	By sale 48 bales cotton			1,166	27	164	42 48
" 20.	" " 30 " "			796	79	152	26 88
" 28.	" " 39 " "			1,187	67	144	37 98
Dec'r 19.	" " 14 " "			394	80	123	10 76
1852.							
Jan'y 6.	" " 36 " "			934	66	105	21 80
" 14.	" " 8 " "			225	03	97	4 85
" 22.	" " 25 " "			660	36	89	13 05
	200 bales.						
Ap'l 20.	" balance of interest ac., your favor			135	12		
	Dollars			5,500	70		157 79

New Orleans, April 18, 1852.

(Signed) PAYNE & HARRISON.
Per W. HUNTINGTON.

179 EXHIBIT "B" to dep. of J. U. Payne.

Diamond Place in Acc't with Payne & Harrison.

1853.
Feb'y 21. To this am't put to credit of J. E. Davis' individual ac. 3,795 37

CREDITS.

1852.							
Nov. 13.	By proceeds sale 30 bales cotton	1,239	98	100	27	55	
Dec'r 7.	" " " 27 " "	1,119	98	76	18	90	
1853.							
Feb'y 4.	" " " 40 " "	1,374	32	48	14	64	
	97 bales.						
Feb'y 21.	" Interest due on credits, as per margin	61	09				
		3,795	37		61	09	

New Orleans, February 21, 1853.
(Signed)
PAYNE & HARRISON,
Per W. HUNTINGTON.

EXHIBIT "C" to dep. of J. U. Payne.

Diamond Place, Acc't with Payne & Harrison.

1853.
July 16. To am't put to credit J. E. Davis' ac. 2,295 92

CREDIT.

1853.
June 13. By sale 60 bales cotton 2,295 92

New Orleans, July 16, 1853.
(Signed)
PAYNE & HARRISON,
Per W. HUNTINGTON.

180 EXHIBIT D 1 to deposition of J. U. Payne.

Sale of twenty-seven bales cotton by Payne & Harrison for account of Jos. E. Davis, Esq. Sold Menlord, 23 Nov., 1852.

Diamond Place, 27:

Ib X--493	155--475	X440
X--454	142--460	∝455
1X--523	157--465	∝469
150--473	153--482	∝458
147--498	156--475	∝498
151--483	178--438	∝422
149--475	145--498	∝418
136--433	154--470	
146--465	140--449	
131--511	X--442	
4,808	4,654	3,160

27 bales, weighing 12,622lb, 9⅜ c. $1,183 31

Charges:

Freight, $—; charges per B. L.	$20 25	
River insurance, } None.		
Fire do. }		
Drayage, storage, labor, & weighing	13 50	
Commission 2½ % on sale	29 58	
		63 33
Nett proceeds, doll's		1,119 98

E. E. Correct: E. C. L.

New Orleans, 10 Dec., 1852. H.

PAYNE & HARRISON.
P'r ADAMS.

For E. C. Laughlin (in pencil).

181 EXHIBIT D 3 to deposition of J. U. Payne.

Sale of eight bales cotton by Payne & Harrison for account of Jos. E. Davis, Esq. Sold Gwathney, 13th Jan'y, 1852.

Diamond Place, 8:

419
439
454
439
421
465
411
523

3,571lb 6¾ c. 241 05

Charges:

Freight, $—; charges per B. L.	$6 00	
River insurance, } None.		
Fire do. }		
Drayage, storage, labor, & weighing	4 00	
Commission, 2½ % on sale	6 02	
		16 02
Nett proceeds, doll's		225 02

E. E. Cor.: E. C. L.

New Orleans, 21st Jan'y, 1852.

PAYNE & HARRISON.
P'r ADAMS.

182 EXHIBIT D 4 to deposition of J. U. Payne.

Sale of thirty bales cotton by Payne & Harrison for account of Jos. E. Davis, Esq. Diamond Place. Sold Stewart & Co., 3d Nov., 1852.

Diamond Place, 30:

lb X--463	103--478	101--463
438	476	X--448
105--451	462	104--445
X--483	458	103--429
X--461	116--444	X--484
108--480	123--438	106--497
X--461	X--469	X--429
115--464	111--448	117--428
X--464	150--468	X--449
119--498	X--463	120--458
4,658	4,604	4,530

Duplicate.

30 bales, weighing 13,792, 9½ c.		$1,310 24
Charges:		
Freight, $—; charges per B. L.	$22 50	
River insurance, } None.		
Fire do. }		
Drayage, storage, labor, & weighing, 50c	15 00	
Commission, 2½% on sale	32 76	
		70 26
Nett proceeds, doll's		1,239 98

E. E. Correct: E. C. L.

New Orleans, 13 Nov., 1852.

PAYNE & HARRISON.
P'r H'Y TRICON.

183 Ex. D. 5 to deposition of J. U. Payne.

Sale of thirty-six bales cotton by Payne & Harrison for account of Jos. E. Davis, Esq. Sold Harrison & Co. 27th Dec., 1851.

Diamond Place, 36:

lb455	" --417	" --478	458
466	" --461	" --491	469
304--534	" --462	307--443	470
" --442	" --474	306--449	509
308--447	" --447	" --450	499
" --502	" --458	" --438	
297--464	" --448	" --473	
" --452	" --438	" --469	
305--458	" --475	299--477	
" --515	" --504	" --444	
4,735	4,661	4,612	2,405

Duplicate.

35 bales, weighing 16,413 —, 6c.	984 78	
1 do. rejected as trash & sold for	20 00	
		1,004 78
Charges:		
Freight, $—; charges p'r B. L.	$27 00	
River insurance, } None.		
Fire do. }		
Drayage, storage, labor, & weighing	18 00	
Commission, 2½ % on sale	25 12	
		70 12
Nett proceeds	----	$934 66

E. E. Correct: E. C. L.

New Orleans, 10 Jan'y, 1852.

PAYNE & HARRISON.
P'r ADAMS.

184 EXHIBIT D 6 to deposition of J. U. Payne.

Sale of fourteen bales cotton by Payne & Harrison for account of Jos. E. Davis, Esq. Sold Haynes & Co. 11th Dec., 1851.

Diamond Place, 14:

lb	
460	474
461	448
444	443
467	402
440	
438	
500	
446	
463	
497	
4,616	1,767

14 bales, weighing 6,383 lbs., 6⅔	----	422 87
Charges:		
Freight, $—; charges per B. L.	$10 50	
River insurance, } None.		
Fire do. }		
Drayage, storage, labor, & weighing	7 00	
Commission, 2½ % on sale	10 57	
		28 07
Nett proceeds	----	$394 80

E. E. Correct: L.

New Orleans, 22d Dec., 1851.

PAYNE & HARRISON,
P'r ADAMS.

185 EXHIBIT D 7 to deposition of J. U. Payne.

Sale of thirty-nine bales cotton by Payne & Harrison for account of Jos. E. Davis, Esq. Sold Breck & Peck 24 Nov., 1851.

Diamond Place, 39:

X--435	231--457	213--441	223--458
244--462	238--440	234--444	X--455
246--460	239--482	" --480	227--420
214--480	237--387	" --432	212--455
X--446	247--463	210--446	211--448
219--415	242--395	206--440	228--460
X--435	243--404	216--442	229--401
233--444	X--397	" --462	" --433
" --457	241--417	232--458	" --440
222--452	240--435	" --417	
4,486	4,277	4,462	3,970

39 bales, weighing 17,195 lbs., 7⅜c. ---- $1,268 12

Charges:

Freight, $—; charges, p'r B. L.	29 25	
Fire insurance, } None.		
River " }		
Drayage, storage, labor, & weighing	19 50	
Commmission, 2½ % on sales	31 70	
		80 45
Nett proceeds	----	$1,187 67

E. E. Examined: E. C. L.
New Orleans, 29th Nov., 1851.

PAYNE & HARRISON,
P'r ADAMS.

186 EXHIBIT D 8 to deposition of J. U. Payne.

Sale of thirty bales cotton by Payne & Harrison for account of Jos. E. Davis, Esq. Sold Schmidt & Co, 10th Nov., 1851.

Diamond Place, 30:

℔207--453	195--409	180--411
191--393	200--443	183--419
132--390	192--444	196--450
194--455	190--392	201--433
193--425	208--442	199--442
190--435	" --428	" --432
206--427	197--424	" --415
188--436	187--469	189--425
203--426	202--416	204--440
186--386	179--396	" --455
4,226	4,263	4,322

30 bales, weighing ℔12,811, 6¾c. ---------- 864 73

Charges:

Freight, $—; charges p'r B. L.		22 50
River insurance, 15c.	$4 50	
Fire do. ½%	$4 32	
		8 82
Drayage, storage, labor, & weighing		15 00
Commission, 2½% on sale		21 62
		67 94
Nett proceeds		$796 79

E. E. Exa: E. C. L.
New Orleans, 18 Nov., 1851.

PAYNE & HARRISON,
Per L. H. ADAMS.

187 EXHIBIT "D" 9 to deposition of J. U. Payne.

Sales of forty-eight bales cotton by Payne & Harrison for account of Diamond Place. Sold Campbell & Rickarly, 1st Nov., 1851.

Diamond Place, 48:

℔145--396	140--355	154--368	X --362	" --383
131--370	" --371	151--369	X --390	" --400
157--380	133--388	X --394	142--399	175--402
177--400	174--385	X --343	X --402	165--374
164--347	" --358	136--395	138--363	161--376
160--418	158--364	139--376	148--369	134--344
132--384	173--385	171--366	137--371	" --375
156--361	170--425	" --362	" --364	176--412
155--405	178--374	150--383	153--363	
152--384	166--374	144--376	149--374	-- 1
3,853	3,779	3,732	3,757	3,066

48 bales, weighing 18,187 ℔, 7¾c. *cs.* ---------- 1,273 09

Charges:

Freight, $—; charges per B. L.		36 00
River insurance, 18 cs.	$8 64	
Fire do. ½%	6 36	
		15 00
Drayage, storage, labor, & weighing		24 00
Commission, 2½% on sale		31 82
		106 82
Nett proceeds, doll's		1,166 27

E. E.
New Orleans, 7th November, 1851.

PAYNE & HARRISON,
Per L. H. ADAMS.

188 EXHIBIT D 10 to deposition of J. U. Payne.

Sale of forty bales cotton by Payne & Harrington for account of Jos. E. Davis, Esq. Sold H. Rankin & Co., Dec. 15th, 1853.

Diamond Place, 40:

℔161--473	156--475	192--460	182--533
162--509	" --480	183--443	186--474
171--480	178--516	159--481	" --479
189--442	172--447	164--484	170--488
175--453	" --478	180--457	" --497
167--450	174--445	184--474	194--465
195--437	188--456	185--477	107--530
168--454	163--430	185--513	" --500
169--479	179--474	193--506	196--498
X --480	176--443	160--477	177--445
4,657	4,644	4,772	4,909

40 bales, weighing ℔18,982, 7¾c.		1,471 10
Charges:		
Freight, $—; charges per B. L.	40	
River insurance		
Fire "		
Drayage, storage, labor, & weighing	20	
Commission, 2½% on sale	36 78	
		96 78
Nett proceeds		1,374 32

E. E. Correct: E. C. L.

New Orleans, 11th Jan'y, 1853.

PAYNE & HARRISON,
P'r ADAMS.

189 EXHIBIT D 11 to deposition of J. U. Payne.

Sales of sixty bales cotton by Payne & Harrison for account of Jos. E. Davis, Esq. Sold Brick & Peek, 8th June, 1853.

Diamond Place, 60:

℔405--445	437--418	400--448
430--440	429--453	374--453
439--412	434--391	394--398
406--354	431--439	464--408
406--441	470--482	412--434
416--426	442--408	450--428
434--441	405--424	383--434
438--378	456--493	458--498
396--426	426--395	485--450
425--384	430--408	511--464
4,195 4,147	4,360 4,311	4,331 4,415

60 bales, weighing lb25,759, 9½c. ---------- 2,447 10

Charges:

Freight, $—; charges per B. L.	60 00	
River insurance, } None. Fire do. }		
Drayage, storage, labor, & weighing	30 00	
Commission, 2[%] on sale	61 18	
		151 18
Nett proceeds		$2,295 92

Correct: E. C. L.

New Orleans, June 13th, 1853.

PAYNE & HARRISON,
P'r ADAMS.

190 And on the 5th day of May, A. D. 1882, the deposition of E. C. Laughlin, a witness for the complainant in said cause, was filed in the office of the clerk of said court, and is in the words and figures following, to wit:

191 In the Circuit Court of the United States for the Southern District of Mississippi.

FLORIDA LAUGHLIN *vs.* JOE D. MITCHELL *et al.*

Be it remembered that on this 27th day of April, A. D. 1882, at Diamond landing, Mississippi, in said district, pursuant to notice duly given, there was produced before the undersigned examiner of said court, E. C. Laughlin, a witness for the complainant in the above-stated cause, whose deposition, when taken, will be read in evidence in the trial of said cause, who, being by me first duly sworn, in answer to the interrogatories propounded to him, did depose and say as hereinafter written.

Interrogatories Propounded to Mr. E. C. Laughlin.

Int. 1. What is your name, age, residence, and occupation?

Int. 2. What State are you a citizen of?

Int. 3. What relation or connexion have you with complainant, Mrs. Florida C. Laughlin?

192 Int. 4. Were you acquainted with the late Joe E. Davis?

Int. 5. When did you first move to Diamond Place?

Int. 6. What caused you to move to Diamond Place, and where were you living prior to that time?

Int. 7. What business did you engage in at that time of your moving to Diamond Place?

Int. 8. What sort of ownership did you and Mrs. Laughlin exercise over Diamond Place?

Int. 9. What did you do with the crops of Diamond Place from the time you moved to it up to Dec., 1858?

Int. 10. Examine the accounts of sales rendered by the house of

Wm. Laughlin & Co., some to Mrs. McCaleb and some to you, and say, if you can, to whose credit or what account the net proceeds of these sale- were put.

Int. 11. State, if you can, what was the Diamond Place account and what was meant by this.

Int. 12. What debt do you mean or allude to in this last answer, and how was this debt created?

193 Int. 13. Was there or not a sale under this mortgage of McCaleb to Jacob; and, if so, when?

Int. 14. Was this debt to Wm. Laughlin & Co. created prior or subsequent to this sale?

Int. 15. How and by whose order and on whose draft or drafts was the amount paid in order to settle this Jacobs debt?

Int. 16. Did Mr. Joe E. Davis have any connection with this payment to Jacobs or not?

Int. 17. How long after 1846 was this debt paid to Jacobs? Was it paid immediately after the sale or within the space [of] a year or more?

Int. 18. Can you state whether or not this debt was in liquidation of any note or notes given at the time of the sale; and, if so, whose notes were they?

Int. 19. Did you or not have any personal knowledge of the details of the sale in 1846, as to the means of payment, &c.?

Int. 20. Did the house of Wm. Laughlin & Co. look to Mr. Davis to repay this amount or not, or how did they expect to get payment of it?

194 Int. 21. You say that the debt to Wm. Laughlin & Co. was composed then of the amount the firm paid to liquidate the debt to Jacobs and the indebtedness owing to the firm at the time of the sale?

Int. 22. Examine the ac. hereto appended. State, if you can, what account it is, to whom was it rendered, and what was the occasion of its being sent.

Int. 23. What was done with the crops of Diamond Place after the house of Wm. Laughlin & Co. failed?

Int. 24. Did you or Mrs. L. get any benefit of the proceeds of the sales by Payne & Harrison or not; and, if not, what disposition was made of them?

Int. 25. Examine the letter marked Exhibit "A" to this interrogatory. State, if you can, by whom it was written, what was the occasion of its being written, and all about it.

Int. 26. Was there any other debt due by Diamond Place or not? If so, to whom was it due?

195 Int. 27. Why was it, then, that you allowed Mr. Davis to get the proceeds of the sales by Payne & Harrison?

Int. 28. Why was it that Mr. Searls called on Mr. Davis to settle the Diamond Place account?

Int. 29. Read and examine Exhibit "D" to the bill. State, if you can, what, if any, connection this Diamond Place account had with the note of fifteen thousand and thirty-six dollars described in the contract marked as aforesaid.

Int. 30. Did Mr. Davis or not give Mrs. L. or you to understand that as soon as the debt was paid that Diamond Place would be the property of Mrs. Laughlin; if so, when, how, and in what way?

Int. 31. Examine letter marked Exhibit "A" to this interrogatory, and state who wrote this letter and to whom was it written; what has become of the original; who wrote the copy hereto exhibited.

196 Int. 32. Examine the accounts hereto appended as Exhibits "A & B" to this interrogatory, and state, if you can, by whom they were rendered and to whom they were rendered and what accounts they are.

Int. 33. Were you or not present when the lease marked "Exhibit E" to the bill in this suit was executed?

Int. 34. When and where was it executed?

Int. 35. Give all the circumstances attending its execution as fully and particularly as you can.

Int. 36. Where was Mr. Davis when the conversation about the deed first commenced?

Int. 37. Examine the deed and state what were the circumstances attending the acknowledgement.

Int. 38. How many acres of land were cleared on Diamond Place when you came here, and how many slaves were there, and what was the value of the slaves?

Int. 39. Are you or not acquainted with the values of lands and slaves in 1846 in this section?

197 Int. 40. Examine the letter marked Exhibit "A" to this interrogatory, and state whose writing it is and to whom was it written and by whom was it received.

Int. 41. Can you recollect or recall how much money had been repaid when this lease (Exhibit "E" to bill) was executed?

Int. 42. Examine letter marked Ex. No. 10 to dep. of Jefferson Davis, and state in whose handwriting the letter is.

Cross-interrogatories:

X Int. 1. When did you retire from the house of Wm. Laughlin & Co.?

X Int. 2. What sum of money, if any, did you withdraw from that firm?

X Int. 3. Do you know anything of a gift by Mr. Joe. E. Davis to Mrs. Laughlin, your wife, of seven slaves in the year 1846?

X Int. 4. Were these slaves upon the place when you removed there?

X Int. 5. Were you acquainted with one Thos. B. Harner?

198 Did he obtain a judgment against you in the year 1852? And, if yea, state what the indebtedness was on which he sued and whether the judgment has ever been satisfied. What was the amount of the judgment?

X Int. 6. Are you the E. C. Laughlin who was examined as a witness on behalf of Mr. Jefferson Davis in his suit against the defendant in this case, Jos. D. Mitchell, and his sister, Mrs. Hamer?

X Int. 7. After your removal to the Diamond Place had you any

other income or means of support for yourself and family than the proceeds of crops on that place? If so, state the same fully and particularly.

X Int. 8. Please look at these letters marked Exhibits "A" to this answer, and state if you wrote the same and addressed them to Mr. Davis.

X Int. 9. You have stated you declared some years ago your intention of becoming a citizen of Tennessee. To whom did you
199 make that declaration, and when was it made? When did you propose to remove to Tennessee? How much of your time during the last four years have you passed in Tennessee? If you consider yourself already a citizen of Tennessee, in what city or county in said State do you consider yourself domiciled? Have you any home or residence of any kind in Tennessee?

X Int. 10. Have you in your possession any letters of Mrs. J. E. Davis referring in any manner to the Diamond Place?

X Int. 11. Nearly 24 years have elapsed since the signing of the deed you have been questioned about. Why did you delay the commencement of this suit so long? When did you first consult counsel about —?

X Int. 12. In one of the letters of Mr. J. E. Davis, previously introduced in evidence, he spoke of a "Guion suit" against the Diamond Place as having gone against him. What do you know of that suit, and what was it about?

200 X Int. 13. Who was present at the Hurricane when this deed was signed in 1858?

X Int. 14. In whose handwriting is the deed?

X Int. 15. What was the indebtedness of Diamond Place to Wm. Laughlin & Co. in 1846, before the sale to Mr. Davis?

X Int. 16. The account marked Exhibit "A," to answer No. 22 in chief, shows an indebtedness of $22,830 against Diamond Place in favor of Wm. Laughlin & Co., Nov., 1850. Was this indebtedness ever paid?

X Int 17. How much money did you spend in replenishing the place with mules when you took possession in 1849, and how was it paid? Was not this charged against the place in the account of Wm. Laughlin & Co. against it?

X Int. 18. Do you now regard yourself and wife as *bona fide* citizens of the State of Tennessee?

201 Mr. E. C. LAUGHLIN, a witness for the complainant, being first by me duly sworn, in answer to the interrogatories propounded to him deposes and says as follows:

Ans. to 1st Int. My name is E. C. Laughlin; age, 70; residence, Diamond Place, Miss.; occupation, planter.

Ans. to Int. 2. I am a citizen of Tennessee, and so declared my intentions several years since.

Ans. to Int. 3. I am her husband.

Ans. to Int. 4. I was; I am his son-in-law, having married his daughter.

Ans. to Int. 5. In November, 1849.

Ans. to Int. 6. Prior to that time I was living and doing business at New Orleans, and moved here at the wish and request of my wife, who did not like to live in the city.

Ans. to Int. 7. I was a commission merchant in New Orleans, and when I came here I commenced attending to the
202 business of Diamond Place—planting.

Ans. to Int. 8. The same that any person does over any place that belonged to them.

Ans. to Int. 9. When we came here first the mules and all the stock on the place had died; for the first few years we, of course, had to supply the mules and cultivate the place and supply it with everything necessary to keep up a place of this kind. There had been an overflow that year which caused the loss of stock, &c. For some years afterwards we shipped a portion of the crops to Payne & Harrison for account of Mr. Jos. E. Davis for the purpose of paying the debts on the place.

Ans. to Int. 10. I have examined the accounts of sales herewith handed me. The net proceeds of the sales were put to Diamond Place account. I herewith file said acc't sales as exhibits to this answer, marked Exhibit No. 1 to No. 26, inclusive.

203 Ans. to Int. 11. It was an account kept for the purpose of paying the debts [of] Diamond Place owed after it had been sold.

Ans to Int. 12. This place was sold in 1846 for some twenty-eight thousand and odd dollars. It was bought in by Mr. Jos. E. Davis, and the object was to pay that debt. My recollection is this: that Mr. Charles E. Jacobs, of New Orleans, held a mortgage against this place against Mr. McCaleb, who was then the owner of the place. He was about to foreclose and sell the place. The house of Wm. Laughlin & Co., of which I was then a member, went to Mr. Jacobs and got him to with-old selling the place. Mr. Jacobs agreed that if Mr. Jos. E. Davis would pay him the amount of the mortgage that he would not foreclose it. The house of Wm. Laughlin & Co. paid the amount of the mortgage at that time to Mr. Jacobs and charged it to the Diamond Place account.

Ans. to Int. 13. The only sale I am aware of was in 1846;
204 I don't recollect whether under the Jacobs mortgage or not; I think it was sold under two (2) deeds of trust; I think one was held by Laughlin, Searls & Co., and the other might have been the Jacobs mortgage. There was a sale under the Jacobs mortgage in 1846.

Ans. to Int. 14. It was subsequent to the sale; the place done business with the house of Laughlin & Co., and owed them some money, but after the sale the account was very much increased by the payment of the Jacobs debt.

Ans. to Int. 15. I don't know if there was any drafts passed on the subject; it was an agreement between the house and Mr. Jacobs, and the house paid Mr. Jacobs the money; the agreement was verbal.

Ans. to Int. 16. I am not aware of any; the house paid the debt and charged it to the place.

Ans. to Int. 17. I think it was paid within the space of a year or more—not more than two.

Ans. to Int. 18. I am not aware that any notes were given at all at the time of the sale.

205 Ans. to Int. 19. I was not here at the time, and know nothing except by hearsay.

Ans. to Int. 20. The house was largely in advance of the place at that time, and they may have expected Mr. Davis to assist Mrs. McCaleb to refund them the amount they had advanced.

Ans. to Int. 21. That is it; it was composed of those two items; there was items afterwards added to it.

Ans. to Int. 22. I have examined the account marked Exhibit A to interrogatory No. 22; that account came to me; I believe it to be a transcript of the account of Diamond Place with the house of Wm. Laughlin & Co., and I believe the account to be correct; I had the account in my desk here until I gave it to Messrs. Pittman & Smith.

Ans. to Int. 23. Some of the crops were shipped to Wright, Allen & Co., and some to Payne & Harrison at New Orleans.

Ans. to Int. 24. With the exception of some supplies, such as bagging and rope, Mr. Davis got the benefit of them.

206 Ans. to Int. 25. I have examined letter herewith handed me—Exhibit A to 25 int.; it was written by Mr. Charles J. Searles, one of the partners of the firm of Wm. Laughlin & Co., of New Orleans, and Laughlin, Searles & Co., of Vicksburg; Wm. Laughlin & Co. were at that time the factors of Diamond Place; it was written to me for the purpose of showing the indeb-edness of Diamond Place to the firm; I suppose the request in said letter for the use of Mr. Jos. E. Davis' name was for the purpose of assisting Mrs. Laughlin in paying the debt she owed the house.

Ans. to Int. 26. I am not aware of any other debt.

Ans. to Int. 27. Although Mr. Davis did not owe the debt, he was accountable for a certain portion of it; I can't tell exactly what part from my own knowledge Mr. Davis was accountable for; the only thing I know of is that the letter of Charles J. Searles above referred to states the amount of the notes given by Mr. Davis at, I think, seven thousand dollars; the reason Jos. E. Davis was allowed

207 to receive the proceeds of the cotton sold by Payne & Harrison was probably to help pay off the am't due on the notes spoken of by Mr. Searles.

Ans. to Int. 28. I don't know why he did, unless he thought Mr. Davis would assist Mrs. Laughlin in paying off the large debt she owed on the place.

Ans. to Int. 29. To the best of my recollection that $15,000 was paid by the house and charged to Diamond Place account. It was paid in the manner I have stated before, to wit, to Mr. Jacobs.

Ans. to Int. 30. I was left under the impression that he would make a title to Mrs. Laughlin as soon as the debts were paid. I think he told Mrs. Laughlin so; he did not tell me. In shipping cotton and allowing Mr. Davis to have the proceeds, I was acting under the idea that as soon as the debts on the place were paid Mrs. Laugh-

lin was to have the title. I left New Orleans and came up to live on Diamond Place for the purpose of hastening to pay off the
208 debts on the place, and purchased some negroes and brought [them] up here at the time to work on the place. When I came up here I gave up all connection with the house of Wm. Laughlin & Co.

Ans. to Int. 31. I have examined Exhibit "A" to Int. 35. I don't know whose writing it is in. It looks like the writing of my nephew, J. D. Laughlin. It seems to have been written to Mr. Jos. E. Davis. I presume the original was sent to Hurricane to Mr. Davis.

Ans. to Int. 32. I have examined Exhibits A & B to Int. 32. They were rendered by the house of Wm. Laughlin & Co. to me. They are accounts of the Diamond Place.

Ans. to Int. 33. I was.

Ans. to Int. 34. It was executed in 1858, at Hurricane.

Ans. to Int. 35. In 1858 Mrs. Laughlin went down to Hurricane to see her father, who was very sick at the time. A few days after she had gone down Mrs. Laughlin sent for me and said Mr. Davis wanted to see me. I went there and found that Mr. Davis had this deed (Exhibit E to original bill) written out, and requested Mrs. Laughlin to sign it. I was in the room at the time. She objected to signing it, stating that it would take her own place from
209 her, or something to that effect. Mr. Davis was very sick at the time, and became excited and very nervous and insisted upon her signing it. He took her by the arm and forced her into the office to sign it. She would not have done so only for the fear [that] her father would fall down in a fit and it might be his death. Immediately after we left the place, and she never entered the house afterwards.

Ans. to Int. 36. When I first saw them Mr. Davis was in the little sitting-room called the old office. He then took her by the arm to what was called the new office, a few yards, about 8 or 10 yards, from the other.

Ans. to Int. 37. Mr. Davis stated that if she did not acknowledge it he would turn her right off of the place or take the place from her, or [words] to that effect.

Ans. to Int. 38. I suppose about 350 or 400 acres of cleared land then. I do not recollect the number of slaves then on the place.

210 Ans. to Int. 39. I was not.

Ans. to Int. 40. I have examined Exhibit A to direct int. No. 40; it is the writing of E. P. McDowell, formerly overseer on this place; it was written to and received by me and in reply to a letter I wrote to him about the circumstances of the sale, as he was present at it.

Ans. to Int. 41. I should say about $18,000.

Ans. to Int. 42. I have examined it; it is in the handwriting of Mrs. Laughlin.

Ans. to X Int. 1. In 1849; I think in Nov. or Dec.

Ans. to X Int. 2. I bought six negroes, which I brought up here.

Ans. to X Int. 3. No, sir; I could say I heard of such a thing but don't know it myself.

Ans. to X Int. 4. Yes, sir.

Ans. to X Int. 5. I was acquainted with Hoover; he obtained judgment against me in 1852; it was for those negroes I have
211 just mentioned as bringing from New Orleans; the judgment was satisfied; I cannot just now remember the amount of it.

Ans. to X Int. 6. Yes, sir.

Ans. to X Int. 7. I had some property in Vicksburg, for which I received some rent; at one time it yielded $1,500.00 per year, but afterwards it was much lower; from 1849 to 1858, I suppose, it yielded six or seven hundred dollars a year.

Ans. to X Int. 8. I have looked at letters marked Exhibits A & B to X Int. No. 8; yes, they were written by me, addressed to Mr. Davis.

Ans. to X Int. 9. It was made at Tate Springs and Mineral Hill, Tennessee; I stated it to Capt. Tomlinson, of Tate Springs, and Capt. Thomas, of Mineral Hill, in 1878; I think of going there this summer; I don't know how long I will stay there this summer; it will depend on circumstances. In the last two years I have passed about 4 or 5 months in Tennessee; I declared my intention to become a citizen in Grainger Co., Tennessee; I have no home or
212 residence in Tennessee belonging to myself; I have not voted in any other State since that time.

Ans. to X Int. 10. I don't think I have any at present; I think I gave all that I had to Mr. Pittman.

Ans. to X Int. 11. I think the principal reason for delay was because the first counsel we consulted—Mr. Thos. A. Marshall—did not think we would gain much by it; we consulted him some twelve or thirteen years ago; I think we consulted Mr. Marshal about the year 1861 or 1862; I consulted Mr. Pittman about this, I think, in 1873 or 1874.

Ans. to X Int. 12. I suppose that that suit related to the seven negroes given by Jos. E. Davis to his daughter, Mrs. Laughlin.

Ans. to X Int. 13. Dr. Ledyard was there at that time; Rev. Mr. Damos was there; there was none of Mr. Davis' family there.

Ans. to X Int. 14. It looked to me to be in the writing of Ben. Montgomery, but I can't swear to it. Ben. Montgomery is now dead.

213 Ans. to X Int. 15. I don't think it was as much as ten thousand dollars. It might have been four or five thousand dollars, but I really cannot recollect. It is all guesswork.

Ans. to X Int. 16. Some of it was paid, of course. But it is impossible for me to know what amount has been paid and what part is yet due.

Ans. to X Int. 17. I think I bought some 12 or 15. They were paid for the following year out of the proceeds of the place. I bought them on my own credit. This was part of the indebtedness charged against the place in the account of Wm. Laughlin & Co.

Ans. to X Int. 18. I think so. That is the only State I am entitled to vote in. E. C. LAUGHLIN.

214 To Mr. E. C. LAUGHLIN, Sr., on recall:

Int. 1. State whether or not Mrs. Laughlin's health and spirits were in any way affected after signing the instrument marked Exhibit E to bill.

Int. 2. State whether or not you have taken any steps or made any inquiries with a view to the purchase of a home in Tennessee; and, if so, what steps, and when?

Int. 3. State whether or not you have ever voted or offered to vote in Tennessee, or to pay any tax or taxes; and, if so, when and where?

X Int. 4. Who is Mr. Jeff. Laughlin? Does he reside at Diamond Place? Have you or not at times had him to copy letters, &c., for you and Mrs. Laughlin?

Cross-interrogatories:

X Int. 1. The letters marked No. 10 to deposition of Jefferson Davis purports to have been written by Mrs. Laughlin to her
215 father. Was this letter ever sent to him, and, if so, how did it come into your possession?

Mr. E. C. LAUGHLIN recalled.

Answer- to interrogatories on re-examination:

Ans. to Int. 1. *They* were very much effected; so much so that I think if I had not taken her North she would have died. For weeks she did not sleep at night; walked through the rooms like a person affected by excitement and with nervous insomania from the treatment she had received from her father.

Ans. to Int. 2. In 1878 I went and examined several farms with a view to purchase for a residence. I saw one that pleased me more than the others, which I was informed would be sold under a deed of trust and could be got on reasonable terms, which Capt. Tomlinson informed me he would let me know when it would be sold under the deed of trust, and would get and give me all the particulars.

216 Ans. to Int. 3. I offered to vote in Tennessee the last presidential election and offered to pay my poll-tax at Rutledge, the county site of Grayson county. My vote was declined, they being of opinion that I had not been long enough a resident of the county, and my poll-tax was not collected because they thought I was over age.

Ans. to Int. 4. He is my nephew; he resides at Diamond Place. At times I have had him to copy letters for myself and Mrs. Laughlin.

Cross-examination by Mr. LEA, of counsel for defendants:

Ans. to X Int. 1. I think this is only a copy of a letter sent to him. There seems to be a great many blots on the letter, and I presume she would not have sent a letter like that and so had it copied. The endorsement on the back of said exhibit is in my handwriting.

E. C. LAUGHLIN.

217 And I do certify that the foregoing answers to the interrogatories propounded were written down by me in the presence of the witness, E. C. Laughlin, and after having been read over by me in his presence, were by him signed in my presence; and I do further certify that there were present at said examination Murry F. Smith, Esq., of counsel for complainant, and A. M. Lea, Esq., of counsel for defendants.

Given under my hand this 27th day of April, A. D. 1882.

J. M. McKEE, *Examiner.*

Filed May the 15-, 1882. J. M. McKEE, *Clk.*

218 EXHIBIT A to interrogatory No. 22 of deposition of E. C. Loughlin.

Diamond Place in ac. with Wm. Laughlin & Co.

Interest made up to 20 November, 1850, @ 8 % per annum.

1850.							
April	1.	To balance due us this day per ac. rendered			21,119 85	235	1,102 92
	"	" E. L. L. d'f't fav. himself, due 23 | 26 August	$800 00				
	"	" E. L. L. d'f't fav. Green & Co., due 1 | 4 Nov.	986 58				
	"	" E. L. L. d'f't for 3 mules, due 15 Nov.	300 00				
	"	" J. E. Davis d'f't fav. L., S. & Co., 2 | 5 Dec.	2,000 00		4,086 58		
	"	" Invoice sundries from L., S. & Co., per Princess			83 50	235	4 34
	13.	" pork & hay, $50.04; lime & mustard, 4.87; E. C. Lord to Gardner, $39.50			94 41	223	4 66
May	10.	" corn & hay & freight on pork			69 45	195	3 00
	20.	" corn & sundries, $436.77; food for negroes, $2.00; bill of millinery, $18.34; shingles, 6.50			463 61	185	20 06
July	6.	" invoice 1 cask claret			32 30	138	1 60
	"	" paid McDowell			20 00		
	"	" E. C. L., d'f't on L., S. & Co., due 1 | 4 November			163 79		
June	28.	" invoice sundries from L., S. & Co.			8 50		
	"	" paid Sampson & Co. for repairing rocking-chair	$3 75				
		" difference in purchase and return of furniture	51 00				
		" single bedstead & mat-ress	9 00				
		" drayage on the above	2 75				
					66 50	146	2 14
Aug.	10.	" paid E. C. L., dr'f't for Porterfield	205 35				
		" paid 2 boxes candles	24 57				
					229 92	103	5 26
Sept.	13.	" invoice sundries from L. S. & Co.	252 23				
	20.	" ditto ditto " ditto	31 82				
Oct.	4.	" ditto tallow " ditto	6 63				
					290 68	69	4 44
	14.	" ditto bagging & rope from L. S. & Co.	108 55				
		" paid E. C. L. order to Jester	25 00				
					133 55	37	1 09
Nov.	15.	" amount of interest made up to 20 Nov., 1850			1,149 51		1,149 51
					$28,012 15		

219

1850.

		To amount bro't forward			28,012 15
		Cr.			
May	7.	By am't from Gen. Worth for cotton seed		85 75	
July	5.	" 1 bale hay		3 12	
Octo.	14.	" sale 20 bales cotton		1,077 75	
Nov.	20.	" interest to date, 36 days, is		8 60	
		" E. C. L. d'f't fav. himself, due 23 | 26 August	$8,000 00		
		" E. C. L. d'f't fav. Green, due 1 | 4 Nov.	986 58		
		" E. C. L. d'f't for 3 mules, due 15 Nov.	300 00		
		" J. E. Davis d'f't fav. L. S. & Co., due 2 | 5 Dec.	2,000 00		
				$4,086 58	5,181 80
		" balance due us when the above 4 d'fts, am't to $4,086.58, are retired by yourself			22,830 35
					28,012 15
"	20.	To balance due W. L. & Co.			22,830 35

220 EXHIBIT A to 25th direct Int. of deposition of E. C. Laughlin.

VICKSBURG, *May* 20, 1850.

DEAR EDMUND: I have your est'd favor per Cupid. W. L. passed up this morning per Magnolia. I handed him a good lot of drafts. Mr. Davis (after much trouble) gave me $7,000 in two drafts per ac. Diamond Place and expects you to pay them. He at first refused to settle any portion of that ac., saying that you must arrange it. Well, it is a tremendous ac., and with what you will want will be $30,000.00 at the end of the season. Mr. D. said that of course he was bound for it, but expected you to arrange it. You cannot do it, I know, and the want of his name in arranging the entire balance puts us to serious inconvenience, for his name is like gold to us. I cannot state everything that I wish to say to you on paper, and you must come up here. Corn is high and rising, and the sooner you come the better. It is useless for me to go into a long detail of
221 the thousand things I want to see you about, and you must come up very soon. I am almost sick to-day, and our town is sickly. We are all well and join in love to you and yours.

Yours, very dearly, C. J. SEARLES.

E. C. Laughlin, Esq., Diamond Place.

EXHIBIT A to 31 direct Int. of Dep. of E. C. Laughlin.

Copy.

DIAMOND PLACE, *3rd Jan'y*, 1858.

MY DEAR FATHER: I herewith enclose statement of the sums paid by Diamond Place for her redemption. I hope you will be satisfied. I hope you will be satisfied that neither my husband nor myself have led such extravagant lives since our marriage as to render it necessary to withdraw from us the property I have so many years

looked upon as my own. The whole sum would have been paid
before now, but that some unavoidable claims arose which
222 unfortunately seemed to require immediate attention—such
as, for instance, the decision against Mr. Laughlin on lawsuit about his negroes [and] Mr. Porterfield's mistake in building those expensive stores; but for those two drawbacks my entire debt would have been paid. As it is, we can make another payment now of $7,000, and if you consider it necessary, mortgage the place for what is remaining until the next crop—I mean for the sums due on account of law expenses. Papa, I have lived the best years of a somewhat sad-ened life on this place. My love, my time, my tastes, have all been exercised in beautifying it. It is one of the blessings God gave me in lieu of loving children. Can you imagine, you who are so much calmer and colder, the blow you inflict upon me by wishing to make me a mere tenant at will and taking from me all further interest in my old dear home and causing your heirs to look upon me as an interloper who lives too long. For you it may
be well; for me, I know that God will not leave me
223 quite desolate if I try to do right. I have not thought much
about money, except sometimes to give a little for books and flowers, or, what was pleasanter to me than even them, to make a sad heart lighter. I did not wish that or anything from you, but what little love you could spare me from others. I felt secure in your sense of justice, and never dreamed that you could, so soon as my body was cold, wish to turn upon the world the husband who loves and protects me or the orphan children I sheltered in my heart and home, to sadden all my latter years for the sake of those who are nothing to me, and may one day prove nothing to you. I did not marry an extraodinary genious, it is true, but my husband is above most men I have known in purity of purpose, uprightnes- in dealing, and tenderness of heart. No mistrust, implied or spoken, can do anything but draw me nearer to him. I only trust that all those in whom you are now so deeply interested may show themselves as
worthy of your esteem. Please let me hear from you as soon
224 as convenient your decision with regard to the subject of this
letter. I hope you are constantly improving in health. Farewell.

Your daughter,

FLORIDA D. LAUGHLIN.

P. S.—If you prefer we can give you a New Orleans acceptance for the balance due you, payable next fall.

225 EXHIBIT "A" to interrogatory No. 32 of deposition of E. C. Loughlin.

Diamond Place in Ac. with Wm. Laughlin & Co.

		Interest made up to 1st April.		Days.	Int.
1849.					
Nov.	20.	To balance per ac. sent to E. C. L.	5,121 54		
	"	paid blacksmith at Warrenton	29 54		
	"	invoice sundries per Magnolia	163 80	132	1 60
	"	invoice plank from L. S. & Co.	131 23		
	"	paid Mayo, piano cover & binding	10 55		
Dec.	5.	" Concordia bill	19 63		
	"	paid Folger & Co. Japan lamp & cistern top	4 00	116	60
	29.	" J. E. Davis d'ft favor S. L. & Co., due 2 | 5 Dec., '50 $2,000 00			
	"	commissions for accepting the above 50 00	2,050 00		
	"	J. E. Davis d'ft C. A. Jacobs, due 15 Oct., '49 $5,788 69			
	"	commissions for accepting 144 72	5,933 41	168	221 52
March	11.	" paid Guion's judg't *vs.* McCaleb	10,778 88	385	922 28
Dec.	21.	" invoice sundries from L. S. & Co.	31 15	100	65
1850.					
Jan'y	4.	" Do. do pr. Montgomery	12 45		
	"	" paid ½ court fees in suit *vs.* Evans	10 05		
	"	" " taxes on E. C. L.'s property	5 50	87	54
	11.	" invoice bagging & rope per L. S. & Co. 27 90			
	"	paid E. C. L.'s order to Sanderson 155 00			
	"	400 feet plank 8 50			
	"	order to Shannon 50 00	241 40	80	4 30
	26.	" E. C. L.'s order fav. I. I. Green & Co., due 1 | 4 Nov., '50	986 58		
	"	" E. C. L.'s order for mules 26 Aug.	800 00		
Feb'y	1.	" 5 bbls. lime 6 50			
	"	" paid order to Gen'l Worth 5	11 50	59	17
	"	com's for accepting 2 d'ts $986.58 & 800.00	44 60		
	"	paid ½ of $400 for compromise Crow Roat	200 00		
	"	invoice ploughs, iron shoes, & lumber L. S. & Co.	64 85	59	34
	"	your d'ft for 3 mules 15 Nov., 1850	300 00		
	15.	" invoice sund's with Shunberg from L. S. & Co.	51 75	45	52
226					
March	15.	" paid J. E. Davis' order fav. W. C. Smedes	1 00		
	"	taxes for '49, $66.60; Worth fr't bill, $8.00; pork & coffe-, $67.58; fa/r, $3.75; sides, 17.25, by L. S. & Co.	163 18	16	62
	"	repairing gun, $3.00; tobacco per Magnolia. 9.55	12 55		
			$27,278 20		$1,314 75
1850.					
March	—.	To am't bro't forward	27,278 20		
		Interest made up	1,314 75		
					28,592 95

Cr.

1849.					
Dec 19.	By sales 17 bales cotton			714 23	
1850.					
Jan'y 4.	" proceeds of J. E. Davis' d'ft $2,000, due 2 | 5 Dec. next, disc't @ 10 % & 1 % brokerage			1,792 24	
March 19.	" sales 30 bales cotton			1,341 17	
	" 102 days' int. on $714.23		$16 80		
	86 do. " 1,792.24		34 26		
	12 do. " 1,341.17		3 56		
				54 00	
					3,901 64
April 1.	To balance				24,961 31

Due as follows:

1 April, 1850	$20,604 73	
Commissions on this am't, being 2½ for cash advance	$515 12	
		$21,119 85
Due 23 | 26 Augt., 1850	800 00	
1 | 4 Nov., "	986 58	
12 | 15 " "	300 00	
2 | 5 Dec., "	2,000 00	
		4,086 58
Due W. L. & Co.		$25,206 43

E. & O. E.

New Orleans, April 1, 1850.

227 EXHIBIT B to interrogatory No. 32 of Dep. of E. C. Laughlin.

Diamond Place [in Account] with Wm. Laughlin & Co.

1847.				
March 24.	To balance			2,175 08
25.	" invoice sundries, p. Sam. Dale			21 50
"	" paid for oranges			2 00
Apr. 1.	" invoice sundries, per do.			160 99
5.	" ditto. " " Concordia			151 05
	" paid order for W. W. Stevens			30 52
10.	" " H. E. Baldwin for sundries			10 00
19.	" invoice sundries, per Concordia			73 00
"	" flour from L., S. & Co.			7 75
"	" topaz bracelet, clasp hair ditto			10 00
"	" d'ft for Middleton, due 1–4 Oct.	150 00		
	com's for accepting	3 70		
				153 75
"	" paid fr't sundries, per Sam. Dale			1 75
30.	" " for making dress			8 50
May 3.	" invoice sundries for J. N. Phillips			35 33
"	" ditto ditto " self			86 00
"	" paid for work on suspenders			4 50
"	" " E. P. McDowell by L., S. & Co.			5 00
"	" invoice, p. Concordia			13 18

Aug'st	30.	To sundries from L., S. & Co.		100 44
		" paid Mrs. McCaleb's d'ft for W. L. Cambron		238 22
		" invoice bagging, rope, & twine from L., S. & Co.		156 40
		" paid order to Charles Buck		30 00
Sept.	23.	" invoice sundries, per Gen. Worth		80 82
		" paid bill of ice		6 75
		" " year's subscribtion to Living Age		7 30
		" " fr't on dress, per Arkansas		25
Octo.	7.	" invoice, per Arkansas No. 4		173 49
		" rope, Meller, & drayage from L., S. & Co.		41 80
		" paid for making 2 dresses		17 00
		" " d'ft fav. Jas. Martell, due 1–4 Dec., '47		466 09
		" " com's for accepting		11 65
		Forward		4,280 11

228

1847.

		To amount bro't forward		4,280 11
May	20.	" your note fav. Shute, due 12–15 Octo.		183 54
		" sundries from L., S. & Co.		10 16
June	3.	" ditto, per Sam. Dale		49 75
	7.	" ditto, " Dallas		109 32
	"	" J. E. Davis d'ft to bal. old ac.	2,357 57	
		com's for accepting	58 94	
				2,416 51
	21.	" sundries, per Dallas		27 25
		" fr't on ice, paid by L., S. & Co.	75	
		" Mrs. McC., order for Brownly	41 00	
		" tea & dinner set & 1 b'r'l flour	50 50	
		" cash paid Mrs. McCaleb	150 00	
				242 25
	28.	" sundries, per Dallas		74 82
July	5.	" ditto, " St. Mary		93 13
		" repairing carriage, paid by L., S. & Co.		25 00
		" binding 4. vol. music		7 00
	9.	" cask of ice		5 25
	"	" making dress		7 50
	15.	" order to McDowell by L., S. & Co.	25 00	
		" flat-boat ac.	30 00	
		" 402 ft. scantling	7 38	
				62 32
	22.	" sundries by different boats		52 85
		" work-basket paid for		1 50
		" sundries, per St. Mary		76 75
		" paid balance for repairing carriage		50 00
Aug'st	2.	" sundries, per St. Mary		24 99
	11.	" ditto, " ditto		39 39
	17.	" ditto, " Sam. Dale		27 34

Aug'st	9.	To ditto from Laughlin, S. & Co.		68 68
	26.	" ditto, per steamer St. Mary		16 33
		" 2 pair gloves		1 50
Octo.	16.	" bagging, rope from L., S. & Co.	74 57	
		" paid order to Yerby by L., S. & Co.	100 00	
				174 57
		Over		$8,127 87

229

Octo.	16.	To amount bro't forward		$8,127 87
"	15.	" invoice sundries, Arkansas No. 4		116 49
		" paid fr't on rope, &c.		1 50
		" " for garden seeds		3 00
	25.	" sundries, per boat		14 30
	31.	" paid fr't bill St. Mary, by L., S. & Co.		8 38
Nov.	4.	" " bonnet & trimming		8 63
		" " E. P. McDowell d'ft fav. Clark		5 00
		" " for feather		75
		" " Mrs. McC. order to McDowell		50 00
		" " invoice bagging, rope, & twine		183 94
	18.	" invoice sundries, per Concordia		27 52
Dec'r	6.	" paid 2nd instalment on bond to Chas. A. Jacobs, with 8 % interest to date		5,829 32
	21.	" sundries, per Magnolia		149 60
		" 48 pots evergreens	24 50	
		" paid d'ft fav. James Dawson	120 00	
				144 50
	27.	" bill, bagging, rope, & drayage from L., S. & Co.	25 91	
		" paid D. McCaleb's note, with interest, to Hatch & Co.	33 39	
				59 30
1848.				
Jan'y	4.	" paid fr't on sundries, per Concordia		1 50
		" paid Mrs. McCaleb d'ft		125 51
		" F. McCaleb d'ft fav. Heozenbattle	110 70	
		Commissions for accepting	2 80	
				113 50
	10.	" paid for cement, seed, &c.		12 25
		" " Mrs. McCaleb, by E. C. Laughlin		50 00
		" " order to Grammer, by L., S. & Co.		29 20
		" " fr't on cement, seed, &c., per Gen. Worth, by L., S. & Co.		3 00
				15,065 06

230

Jan'y	10.	To amount of debits bro't up	15,065 06
			Doll's 15,065 06

Cr.

1847.				
April	5.	By bills receivable for Joseph E. Davis, draft on us, due 25–28 Nov.	2,357	57
Sept.	23.	" sales 43 bales cotton	1,888	13
	30.	" do. 20	825	32
Oct.	12.	30	1,299	35
	25.	24	863	60
	30.	17	565	04
Nov.	8.	22	650	98
	18.	18	519	39
	20.	25	618	94
Dec.	4.	4	178	55
	21.	45	1,084	20
1848.				
Jan'y	18.	20	465	97
"	"	" balance	3,748	02
		Dollars	15,065	06
"	"	To balance due W. Laughlin & Co. cash this day	3,748	02

E. & O. E.

New Orleans, Jan'y 18, 1848.

WM. LAUGHLIN & CO.

231 Ex. A to direct Int. No. 40 of deposition of E. C. Laughlin.

Greenville, Miss., *May 11th*, 1859.

E. C. Laughlin, Esq., Vicksburg, Miss.

Dear Sir: Your favor of 2nd inst. was rec'd yesterday, and hasten to give you all the information on the subject asked. In my opinion, so far as I recollect, the "Diamond Place," land and negroes, was sold under a deed of trust on the 15th day of June, 1846, except several negroes Mr. Davis had given to his daughter Florida, then Mrs. McCaleb, that her then husband had no power to con-
232 vey—Charles, Zallon, Judy, Louisa, Eliza, (Charles' wife), and others—reserved and exempted as the property of the wife, then Florida McCaleb. Present at the sale and who wanted to purchase the property for the husband (said David McCaleb), came his uncle Jonathan McCaleb, now deceased, and David McCaleb, Jr., wanted the said purchase made by the said uncle. Mrs. McCaleb wanted her father, Joseph E. Davis, to purchase the said property. After several conversations between them he consented reluctantly to his father-in-law becoming the purchaser. The property was sold by order of John I. Guion, trustee, or on a mortgage held by one Jacobs, I forget which. Mr. Wm. H. Hammers, of Washington county, was present. Col. Duglas, representing the claims of Green & Crump and others, all present, was under the impression that Mr. Davis was purchasing the property for his daughter. All thought so at the sale, or Jonathan, Mr. McCaleb, would have

given or bid more than any of the property was sold for. Still he bid on some of the negroes—Rody and children—and [I] think
233 after the sale—let Mr. Davis have them; then stopped bidding. Col. Duglas then bid to make the claim of Green & Crump pay something. All conceeded Mr. Davis was buying the place for his daughter, and that he got it for one-third its value.

Yours truly,

E. P. McDOWELL.

P. S.—After hearing all that part of the county was under water I have thought of Mrs. Laughlin's beautiful garden thousands of times—the care and trouble of years to be dashed in a moment by the "flood" to a scene of waste and desolation. Your letter has taken a load of anxiety from my mind. Incidents have taken place in its sacred nooks that can never be effaced from my memory. If I had the genious of a "Burns" or a "Cooper" it would soon be one of the hallowed spots on earth. We have no water here to annoy us as yet—never been again- our levee.

Yours, E. P. McD.

234 EXHIBIT A to X Int. No. 8 of Dep. of E. C. Laughlin.

DIAMOND PLACE, 20*th July*, 1867.

Joseph D. Davis, Esq., Vicksburg.

DEAR SIR: I am in receipt of your kind and esteemed favor of the 8th inst., and sincerely regret that I am unable at present to return the money you so kindly loaned us, the more so as I fear the delay may cause you some inconvenience. I had hoped to have done so some time ago, but the unexpected and continued downward tendency on the cotton market prevented me. It is to be hoped that the unfavorable accounts and prospects of the growing crops will check it, and that prices will improve, when I shall hope at an early day to refund the amount with many thanks. I never saw a more unfavorable season for cotton. The first planting was badly damaged by the cut-worms. Afterwards the locusts done a good deal of injury, and latterly the incessant rains gave the grass an ad-
235 vantage, but I hope by hard work to get rid of it in a short time. The ten dollars you loaned Edmund on his return from Nashatah, Florida informs me was refunded to Mrs. Porterfield. I presume she has forgotten to mention it to you. Florida joins with me in kind and sincere regards to you and yours, and hoping that your health may not suffer by the very hot weather we are now having, believe me, with much respect, sincerely y'r-,

E. C. LAUGHLIN.

EXHIBIT B to X Int. No. 8 of deposition of E. C. Laughlin.

DIAMOND PLACE, 23*rd Oct.*, 1868.

Joseph E. Davis, Esq., Vicksburg.

DEAR SIR: Enclosed please find a sight draft in your favor upon Messrs. H. Wright & Co., Vicksburg, for two hundred and fifty dol-

lars, which I hope will reach you in safety. I think the English and American Yankees have overestimated the crop of this
236 year for selfish purposes, as they generally do, and should cotton go forward freely for the next 30 or 60 days, which is generally the case at this season of the year, prices may decline. I wish to hold on to as much of our little crop as I am able, in order to take advantage of a later or spring market. In the meantime should you stand in need of the balance we owe you you will please let me know. After the worms swept over the crop it opened faster than our small force could pick it out. In case an unfortuate change should take place in the weather, but should it remain as we have it at present for the next three week-, I think we shall save it all. We are well, and trust you and yours are enjoying the same blessing. Florida unites with me in kind love to Lise and yourself, and with kind regards to the other members of your family, believe me, resp'ct'y & truly,

E. C. LAUGHLIN.

237 Ex. No. 1 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 43 bales cotton, for ac. of Diamond Place, to Manadia.

13--452	5--421	19--438	40--411	"--405	41--423
15--458	4--462		"--443	28--423	38--414
16--422	19--418		25--463	"--416	
11--433	18--420		24--370	32--476	
"--456	12--436		37--368	27--443	
21--453	2--483		22--410	34--430	
3--433	"--476		33--351	26--422	
6--445	"--460		35--395	23--381	
20--441	17--431		29--412	31--424	
16--426	18--481		42--431	43--420	
4,419	4,494	438	4,054	4,240	837

21 bales—9,351 @ 11c.	$1,028 61	
22 bales—9,131 " 10¾	981 58	
		2,010 19
43		

Charges:

Freight, per bill lading	32 25	
Drayage, storage, weighing, & labor	21 50	
River & fire insurance, 1½ on 40 bale	18 06	
Commission, 2½%	50 25	
		122 06
	Doll's	1,888 13

E. E.

New Orleans, Sept. 23, 1847.

WM. LAUGHLIN & CO.

238 Ex. No. 3 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 20 bales cotton, for ac. of Diamond Place, to H. C. Comnack & Co.

47--423	41--403
6--396	57--383
58--405	54--436
62--422	51--436
60--417	45--439
53--417	49--423
" --440	59--403
62--442	46--405
48--408	50--448
44--441	60--441
4,211	4,177

8,388 @ 10½c. 880 74

Charges:

Freight, per bill lading	15 00	
Drayage, storage, weighing, & labor	10 00	
River & fire insurance, 1 1/10 on $40	8 40	
Commission, 2½ %	22 02	
		53 42
Nett proceeds		825 32

E. E.

New Orleans, Sept. 30, 1847.

WM. LAUGHLIN & CO.

239 Ex. No. 3 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 30 bales cotton, for ac. of Diamond Place, to Denistown & Co.

79--471	80--402	" --483
74--438	" --440	78--542
80--447	86--438	71--473
88--465	83--447	64--460
77--431	" --487	91--426
67--443	66--443	93--448
68--435	75--453	70--418
72--427	81--415	62--459
76--432	60--490	63--440
85--454	90--468	" --428
4,443	4,483	4,577

13,503 @ 10¼c. 1,384 05

Charges:

Freight, per bill lading	22 50	
Drayage, storage, weighing, & labor	15 00	
River & fire insurance, $1\frac{1}{2}$	12 60	
Commission, $2\frac{1}{2}$ %	34 60	
		84 70
	Doll's	1,299 35

E. E.
New Orleans, Oct. 12, 1847.

WM. LAUGHLIN & CO.

240 Ex. No. 4 to dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 24 bales cotton, for ac. of Diamond Place, to Buck & Peck.

104--412	103--389	98--449		
107--428	101--405	115--426		
108--393	96--416	97--440		
95--406	110--411	115--460		
" --430	106--386			
102--415	109--385			
111--416	116--412			
" --398	112--470			
102--440	94--411			
98--422	114--400			
4,160	4,085	1,775	10,020 @ $9\frac{1}{4}$c.	$926 85

Charges:

Freight per bill lading	18 00	
Drayage, storage, weighing, & labor	12 00	
River & fire insurance, $1\frac{1}{2}$c.	10 08	
Commission, $2\frac{1}{2}$ %	23 17	
		63 25
	Doll's	863 60

E. E.
New Orleans, Oct. 25, 1847.

WM. LAUGHLIN & CO.

241 Ex. No. 5 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 18 bales cotton, for ac. of Diamond Place, to Raymond.

" --417
" --425
157--440
174--465
167--430
178--415
172--420

148--419
177--440
170--395
158--460
" --450
160--425
" --427
164--442
171--421
" --442
174--440
— 7,773 @ 7¼ ---------- $563 54

Charges:

Freight per bill lading	13 50	
Drayage, storage, weighing, & labor	9 00	
River & fire insurance 1 1/20	7 56	
Commission, 2½ %	14 09	
		44 15
		Doll's 519 39

E. E.
New Orleans, Nov. 8th, 1847.

WM. LAUGHLIN & CO.

242 Ex. No. 6 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 22 bales cotton, for ac. of Diamond Place, to Odin & Co.

137--428	" --448	" --460		
" --480	138--428	" --480		
" --428	145--463			
147--439	140--453			
142--441	146--448			
" --439	149--429			
" --453	148--433			
" --418	154--450			
14--414	153--442			
134--438	" --417			
4,378	4,411	940	9,729 @ 7¼	$705 35

Charges:

Freight per bill lading	16 50	
Drayage, storage, weighing, & labor	11 00	
River & fire insurance, 1 1/20 c.	9 24	
Commission, 2½ %	17 63	
		54 37
		Doll's 650 98

E. E.
New Orleans, Nov. 8, 1847.

WM. LAUGHLIN & CO.

243 EXHIBIT No. 7 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co., 25 bales cotton, for ac. of Diamond Place, to Denistown & Co.

" --478	202--407	187--456
195--449	188--473	193--454
200--418	144--458	181--424
178--482	" --468	" --452
186--458	204--473	185--464
192--454	189--443	
182--490	205--402	
199--445	" --433	
146--457	201--463	
191--460	197--450	
4,591	4,470	2,250 @ 6c. ---------- $678 66

Charges:

Freight per bill lading ----------	18 75	
Drayage, storage, weighing, labor, & picking ------	13 50	
River & fire insurance, $1\frac{1}{2}$c. on 4 bale----------	10 50	
Commission, $2\frac{1}{2}$ % ----------	16 97	
		59 72
		Doll's 618 94

E. E.

New Orleans, Nov. 20, 1847.

WM. LAUGHLIN & CO.

244 Ex. No. 8 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co., 20 bales cotton, for ac. of Diamond Place, to Commack.

"--404
"--424
3--429
5--495
14--428
17--450
14--449
11--391
13--434
6--404
8--418
4--410
10--384
13--405
16--421
" --429

12--430
28--425
" --431
7--400

8,362 @ 6⅛c. ---------- $512 17

Charges:

Freight per bill lading	15 00	
Drayage, storage, weighing, & labor	10 00	
River & fire insurance, 1 1/2 0	8 40	
Commission, 2½ %	12 80	
		46 20
	Doll's	465 97

E. E.

New Orleans, Jan'y 18, 1848.

WM. LAUGHLIN & CO.

245 Ex. No. 9 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. [of] 20 bales cotton, for ac. of Diamond Place, to Leech.

36--430	37--410
" --454	30--468
28--427	38--435
32--423	25--429
31--435	27--434
29--445	22--450
30--442	34--442
33--400	110--418
25--423	26--478
24--436	21--440
4,315	4,404

8,719 @ 6¼ ---------- $544 90

Charges:

Freight per bill lading	15 00	
Drayage, storage, weighing, & labor	10 00	
River & fire insurance, 1 1/2 0	8 40	
Commission, 2½ %	13 62	
		47 02
	Doll's	497 88

E. E.

New Orleans, Jan'y 31, 1848.

WM. LAUGHLIN & CO.

246 Ex. No. 10 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 26 bales cotton, for ac. of Diamond Place, to Denistown & Co.

204--414	307--438	300--444
314--430	308--450	298--433
" --440	312--426	247--428
301--440	296--480	310--421
295--440	293--428	315--408
302--409	247--450	299--448
292--430	311--431	
303--423	313--438	
306--433	304--432	
305--438	304--430	
4,297	4,353	2,582

26 bales, weight 11,232, @ 6¼ ---------- $702 00

Charges:

Freight per bill lading ----------	19 50	
Drayage, storage, weighing, & labor ----------	13 00	
River & fire insurance, 1 1/10 % on $40, bale ----------	10 92	
Commission, 2½ % ----------	17 55	
		60 97
Nett proceeds ----------		$641 03

E. E.

New Orleans, Feb'y 21, 1848.

WM. LAUGHLIN & CO.

247 Ex. No. 11 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. [of] 14 bales cotton, for ac. of Diamond Place, to Olier & Co.

329--420	328--430
317--428	322--424
330--421	323--440
318--432	324--430
320--420	
331--400	
325--425	
326--443	
327--408	
319--431	
4,228	1,724

5,952, @ 6¼ ---------- $372 00

Charges:

Freight per bill lading	10 50	
Drayage, storage, weighing, & labor	7 00	
River & fire insurance, $1\frac{1}{2}$	5 88	
Commission, $2\frac{1}{2}$ %	9 30	
		32 68
	Doll's	339 32

E. E.
New Orleans, March 13, 1848.

WM. LAUGHLIN & CO.

248 EXHIBIT *to* No. 12 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 90 bales cotton, for ac. of Diamond Place, to Buck & Peek.

3--411	5--451	14--416	57--395	32--370
16--453	24--430	19--425	38--388	31--375
8--423	26--425	11--446	41--423	30--367
18--434	6--385	7--438	46--444	44--406
17--437	22--418	29--423	53--392	47--453
30--442	12--472	15--430	43--434	40--408
1--406	25--432	2--423	54--399	48--435
14--416	9--473	28--453	45--400	35--424
"--441	13--421	23--417	57--442	34--408
4--409	20--445	1--428	52--404	33--416
4,272	4,352	4,299	4,121	4,062

55--430	52--397	58--394	83--432
36--395	78--421	87--404	61--375
73--429	80--400	60--424	64--382
77--390	90--400	57--429	70--411
89--405	85--405	82--402	84--422
63--417	76--420	86--415	79--407
59--402	72--387	74--380	71--434
39--426	81--434	62--422	65--404
42--412	88--394	56--448	68--404
49--387	67--404	69--400	60--424
4,093	4,062	4,118	

30 bales, weighing	12,923	@	$5\frac{1}{2}$	$710 76
30 ditto,	ditto 12,276	"	$5\frac{3}{8}$	659 83
30 ditto,	ditto 12,275	"	$5\frac{1}{4}$	644 33
				2,015 02

90 ditto.

Charges:

Freight, per bills lading	67 50	
Drayage, storage, weighing, & labor	45 00	
River & fire insurance, $1\frac{1}{2}$c.	23 63	
Commission, $2\frac{1}{2}$ %	50 40	
		186 53
	Doll's	1,828 49

E. E.
New Orleans, October 20th, 1848.

WM. LAUGHLIN & CO.

249 Ex. No. 13 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 40 bales cotton, for ac. of Diamond Place, to Heimer.

111--453	112--437	100--430	117--423
126--465	107--428	113--449	96--425
125--456	104--465	130--436	122--446
98--443	110--390	93--447	127--438
114--414	117--426	106--416	92--465
124--449	94--415	101--435	102--447
95--468	109--447	110--425	97--442
103--413	129--443	128--443	123--460
97--410	120--463	91--453	116--426
105--428	115--401	108--424	127--428
4,399	4,315	4,358	4,400

Total, 17,472 lbs. @ $5\frac{1}{8}$ ---------- $895 44

Charges:

Freight, per bill lading	30 00	
Drayage, storage, weighing, & labor	20 00	
River & fire insurance, $1\frac{1}{2}$ c.	10 50	
Commission, $2\frac{1}{2}$ %	22 40	
		82 90
	Doll's	812 54

E. E.

New Orleans, October 30th, 1848.

WM. LAUGHLIN & CO.

250 Ex. No. 14 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 35 bales cotton, for ac. of Diamond Place, to C. Moore.

135--440	" --438	" --448	151--436
159--465	" --442	159--434	" --449
165--430	164--418	141--450	145--451
142--448	" --457	157--443	" --432
160--470	154--416	162--385	147--426
151--392		153--475	" --465
" --440		" --448	146--421
" --382		150--443	140--425
" --460		137--455	158--441
" --427		152--446	132--386
4,345	2,177	4,427	4,332

Weighing 15,284 pounds @ 4⅝c. 706 88

Charges:

Freight, per bill lading	26 25	
Drayage, storage, weighing, & labor	17 50	
River and fire insurance, 1 1/20c.	9 19	
Commission, 2½ %	17 67	
		70 61
	Doll's	636 27

E. E.

New Orleans, 20 November, 1848.

WM. LAUGHLIN & CO.

251 Ex. No. 15 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 1 bale wool, for account of Diamond Place, to Buke & Leslie.

1 bale weighing 548 pounds @ 6¾ $36 98

Charges:

Freight, per bill lading	75	
Drayage, storage, & labor	50	
River & fire insurance, 1 1/20c.	37	
Commission, 2½ %	92	
		2 54
Nett proceeds		34 44

E. E.

New Orleans, November 22, 1848.

WM. LAUGHLIN & CO.

252 Ex. No. 16 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 26 bales cotton, for ac. of Diamond Place, to Denistows & Co.

184--400	180--440	171--385	
187--391	172--440	173--420	
174--406	167--453	177--401	
188--394	191--440	178--400	
185--401	189--434	183--396	
175--383	170--437	179--405	
176--396	190--400		
180--390	163--441		
182--391	160--450		
181--381	167--448		
3,933	4,383	2,407	10,723 pounds @ 5--- $536 15

Charges:

Freight, per bill lading	19 50	
Drayage, storage, & weighing & labor	13 00	
River & fire insurance $1\frac{1}{20}$c.	6 85	
Commission, $2\frac{1}{2}$ %	13 40	
		52 75
	Doll's	483 40

E. E.

New Orleans, 30 November, 1848.

WM. LAUGHLIN & CO.

253 Ex. No. 17 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 25 bales cotton, for ac. of Diamond Place, to Odin & Co.

" --426	" --435	428		
192--415	" --401	418		
203--431	" --400	446		
" --400	202--423	420		
" --401	204--371	406		
195--418	214--412			
" --423	216--461			
200--413	194--391			
199--416	176--412			
" --431	209--408			
4,174	4,123	2,118	10,415 pounds, $5\frac{1}{4}$c.	546 79

Charges:

Freight, per bill lading	18 75	
Drayage, storage, weighing, & labor	12 50	
River & fire insurance $1\frac{1}{20}$c.	6 70	
Commission, $2\frac{1}{2}$ %	13 68	
		51 63
	Doll's	495 16

E. E.

New Orleans, December 12, 1848.

WM. LAUGHLIN & CO.

254 Ex. No. 18 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 17 bales cotton, for ac. of Diamond Place, to Mauran & Co.

P. 464	488
462	456
446	465
472	500

457	472
471	465
472	450
464	
500	
464	
4,672	3,296

7,968 @ 5c. ---------- $398 40

Charges:

Freight per bills lading	12 75	
Drayage, storage, weighing, & labor	8 50	
River & fire insurance	4 68	
Commission, 2½ %	9 96	
		35 89
	Doll's	362 51

E. E.

New Orleans, Jan'y 10th, 1849.

WM. LAUGHLIN & CO.

255 Ex. No. 19 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin, & Co., 26 bales cotton, for ac. of Diamond Place, to Buck & Peck.

446	453	453
462	481	430
436	493	420
458	449	480
433	433	470
445	443	480
473	460	
461	426	
470	423	
447	459	
4,531	4,522	2,739

Charges:

Freight per bill lading	19 50	
Drayage, storage, weighing, & labor	13 00	
River & fire insurance	6 83	
Commission, 2½ %	16 83	
		56 16
	Doll's	617 02

E. E.

New Orleans, March 7, 1849.

WM. LAUGHLIN & CO.

256 EXH. No. 20 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 20 bales cotton, for ac. of Diamond Place, to Sanchez.

461	" --454			
433	15--443			
443	3--440			
448	6--438			
436	" --418			
463	10--363			
414	12--444			
2--468	17--438			
14--433	" --429			
8--457	16--460			
10				
4,456	4,327	8,783 @ 10¼		$900 25

Charges:

Freight per bill lading	15 00	
Drayage, storage, weighing, and labor	10 00	
River and fire insurance, 1/20 on bale	8 40	
Commission, 2½ %	22 50	
		55 90
		Doll's 844 35

E. E.

New Orleans, October 9, 1849.

WM. LAUGHLIN & CO.

257 Ex. No. 21 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 25 bales cotton, for ac. of Diamond Place, to Sanchez.

" --430	" --427	311--431		
" --443	" --452	25--415		
42--427	35--430	" --424		
30--451	" --429	33--438		
37--459	32--402	" --409		
20--475	" --424			
48--430	" --415			
41--408	36--418			
" --415	" --442			
44--439	" --426			
4,377	4,266	2,117		
			1,076 lbs. @ 9¾	$1,049 10

Charges:

Freight per bill lading	18 75	
Drayage, storage, weighing, and labor	12 50	
River & fire insurance, $1\frac{1}{2}\%$ on bale	10 50	
Commission, $2\frac{1}{2}$ %,	26 23	
		67 98
	Doll's	981 12

E. E.
New Orleans, 26 October, 1849.

WM. LAUGHLIN.

258 Ex. No. 22 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 23 bales cotton, for ac. of Diamond Place, to Hiddleston.

" --405	" --438	68--418		
46--448	57--450	52--440		
" --426	" --408	" --428		
50--463	67--420			
42--423	" --424			
" --429	53--408			
58--420	65--448			
40--428	51--420			
" --383	18--383			
62--384	" --433			
4,209	4,232	1,283		
			9,724 lbs. @ 10c.	972 40

Charges:

Freight per bill lading	17 25	
Drayage, storage, weighing, & labor	11 50	
River & fire insurance, $1\frac{1}{2}$ on bale	9 68	
Commission, $2\frac{1}{2}\%$	24 31	
		62 74
	Doll's	909 66

E. E.
New Orleans, Nov. 13, 1840.

WM. LAUGHLIN & CO.

259 Ex. No. 23 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co., 17 bales cotton, for ac. of Diamond Place, to Sanchez & Ginein.

439	500
400	445
402	390
458	431
438	422

450	435		
422	423		
500			
430			
439			
4,378	3,053	weighing 7,431 @ 10¼c.	761 67

Charges:

Freight, per bill lading	12 75	
Drayage, storage, we-ghing, & labor	8 50	
River & fire insurance, 1 1/10 on bale	7 15	
Commission, 2½ %	19 04	
		47 44
	Doll's	714 23

E. E.
New Orleans, December 19, 1849.

WM. LAUGHLIN & CO.

260 Ex. No. 24 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co., 30 bales cotton for ac. of Diamond Place, to Odin & Co.

102--448	" --365	" --465		
87--420	97--408	114--433		
" --443	99--428	101--443		
" --490	91--458	" --420		
" --460	" --428	109--433		
92--393	" --470	113--428		
89--418	" --405	105--430		
103--403	90--421	112--434		
105--438	100--431	83--413		
" --443	96--430	115--425		
4,276	4,174	4,324	12,774 @ 11½	$1,427 07
				1,437 07

Charges:

Freight, per bill lading	22 50	
Drayage, storage, weighing, & labor	15 00	
River & fire insurance, 1 1/10 on bale	12 60	
Commission, 2½ %	35 80	
		85 90
	Doll's	1,341 17
		1,351 17

E. E.
New Orleans, 19 March, 1850.

WM. LAUGHLIN & CO.

261 Ex. No. 25 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 20 bales cotton, for ac. of Diamond Place, to Charles Odin & Co.

13--448	"--460		
8--425	19--427		
4--418	"--470		
"--423	11--430		
9--428	1--420		
12--411	"--413		
5--413	"--420		
"--485	20--390		
"--400	7--416		
14--445	17--416		
4,196	4,262		
		8,458 pounds @ 13½	1,141 83

Charges:

Freight per bill lading	15 00	
Drayage, storage, weighing, & labor	10 00	
River & fire insurance, 1½% on bale	10 53	
Commission, 2½%	28 55	
		64 08
		Doll's 1,077 75

E. E.

New Orleans, October 11, 1850.

Ppro.: WM. LAUGHLIN & CO.
JAS. E. DUNHAM.

262 Ex. No. 26 to Dep. of E. C. Laughlin.

Sales by Wm. Laughlin & Co. of 20 bales cotton, for ac. of Diamond Place, to Poutts.

54--437	52--416		
60--410	65--415		
66--398	70--396		
64--445	63--392		
55--401	56--408		
69--439	59--409		
57--426	62--445		
61--434	53--410		
68--393	51--409		
67--415	391		
4,198	4,093		
		weighing 8,291 @ 13⅛	$1,088 18

Charges:

Freight per bill lading	15 00	
Drayage, storage, weighing, & labor	10 00	
River and fire insurance, $1\frac{1}{2}\%$	10 50	
Commission, $2\frac{1}{2}\%$	27 20	
		62 70
Nett pounds		102,548

E. E.

New Orleans, Nov. 27, 1850.

Ppro.: WM. LAUGHLIN & CO.
JAS. E. DUNHAM.

263 And on the 15th day of May, A. D. 1882, the deposition of Mrs. Florida Laughlin, a witness in her own behalf in said cause, was filed in the office of the clerk of said court, and is in the words & figures following, to wit:

264 UNITED STATES OF AMERICA,
Southern District of Mississippi:

FLORID- LAUGHLIN
vs.
JOE D. MITCHELL *et al.* } Equity.

Be it remembered that on this 27th day of April, A. D. 1882, pursuant to notice duly given, there was produced before me, the undersigned, examiner in equity of the circuit court of the United States for the southern district of Mississippi, at Diamond landing, in said district, Mrs. Florida Laughlin, a witness in her own behalf, whose deposition will be read in evidence on the trial of the above-stated cause, who, being by me first duly sworn, in answer to the interrogatories and cross-interrogatories propounded to her, deposes and says as hereinafter written.

Interrogatories propounded to Mrs. FLORIDA LAUGHLIN:

Int. 1. What is your name, age, and residence?

Int. 2. Of what State are you a citizen?

265 Int. 3. What relation are you to the late Mr. Joseph E. Davis?

Int. 4. Were you present at the sale of Diamond Place in 1846, when Mr. Joseph E. Davis became the purchaser? And, if you were, state at whose instance he was induced to purchase; what, if any, understanding was had with him about the purchase, whether any one else wished to purchase, and, if they did, why did they not purchase.

Int. 5. State, if you can, on what terms and on what understanding, if any, did Mr. Davis purchase Diamond Place.

Int. 6. How did you propose to pay these debts?

Int. 7. Were there or not any payments made in this way: and, if so, when, how much, and in what way?

Int. 8. State whether or not you and Mr. McCaleb, in his lifetime,

and then you, and then Mr. Laughlin and you worked to this end, whether or not you economised and endeavored to bring about this repayment, and whether or not you acted on the idea
266 that if you did so the place would be yours?

Int. 9. Did or did not Mr. Davis at any time from the sale in 1846 and purchase by him up to the time of the signing of the lease, in 1858, ever give you to understand that you were mistaken in this idea of redeeming the place?

Int. 10. Was Mr. Johnathan McCaleb a man of means or not, and could he have purchased the property if he so desired?

Int. 11. Narrate fully and particularly all the circumstances touching the lease and the acknowledgement of it by you and Mr. L.

Int'y 12. State whether or not the understanding with Mr. Davis was that you were to have a life estate in Diamond Place or that it was to be yours absolutely after the debt was paid.

Int'y 13. Can you or not state whether the fact of Mr. Davis' intention to purchase for you became known to the bystanders and whether or not it had any effect on the bidding?

267 Ans. to Int. 1. My name is Florida Laughlin; age, 65, and my residence is Diamond Place, Miss.

Ans. to Int. 2. Tennessee; have been a citizen of Tennessee about 4 years. I declared my intention to become a citizen of Tennessee in 1878, and we did intend to b-y a home there, but it so happened that we have been unable to do so. We intended to buy a residence there when we first went there, and Mr. Laughlin had two or three in view and the owners said they would write him about it, but they have not done so yet, but it is still our intention to buy a summer residence there.

Ans. to Int. 3. His daughter.

Ans. to Int. 4. I was at home. The sale took place some distance from the house. I was on the place. Mr. Davis was induced to purchase*d* by me. I induced him to do it. He at first was reluctant to buy the place, but after a great deal of persuasion he consented.

Mr. Johnathan McCaleb, the uncle of Mr. David McCaleb,
268 wanted to buy the place in, because Mr. McCaleb preferred that Mr. Johnathan McCaleb should buy it in than my father. Johnathan McCaleb and Mr. McCaleb were very much attached to each other. At first Mr. David McCaleb was opposed to my father buying it in, and I was equally opposed to his uncle buying it in, because I thought he would give us only a life interest in it. I believe that at the time, but I believe on Mr. McCaleb's p*u*rsuasion, his uncle would have allowed him to redeem it.

Ans. to Int. 5. With the distinct understanding that as soon as the debts were paid he would give me the title. He was buying it in for me.

Ans. to Int. 6. With the proceeds of the place.

Ans. to Int. 7. Yes, sir; from the very beginning. Commencing at the year of the sale and continuing until I signed the deed. I cannot estimate how much was paid in this way, but I know that all proceeds of the place not used for our immediate expenses and those of the place went to pay the debt.

269 Ans. to Int. 8. It was our constant and sole object. We economised in every possible way, and as an evidence of this, in 1856, when Mr. Laughlin wished to visit relations in Ireland, he sold property he had in Louisiana in order to bear the expense rather than take any of the proceeds of Diamond Place from the payment of the debt.

Ans. to Int. 9. Never; never once. On the contrary, once or twice, when I urged my father to make out the title in my name, he told me he thought it was more for my interest to wait awhile, but he never once told me he did not intend to give it to me.

Ans. to Int. 10. He was very wealthy.

Ans. to Int. 11. My father had been very ill for a long time, and on this occasion I had been down to make him a visit. I reached the Hurricane in the evening, and almost immediately my father asked me where was Mr. Laughlin, that he did not accompany me? I replied that I left him at home. He directed me to send
270 for him immediately. The next morning Mr. Laughlin came down. After he had been there a short time my father requested us both to walk into the office. He then handed me a paper and desired me to read it aloud, which I did. After doing so I was perfectly thunderstruck, and said to my father, Is not this taking away from me my home? He replied, It insures your safety. I asked if he was taking it from me for Lise and Joe Mitchell, adding, I think, Papa, you are certainly doing enough for them in giving them the Hurricane and a place on the bayou. The place on the bayou is worth quite as much as my home. He said they might not like to dispossess their father, and I added, Neither do I wish to dispossess my husband. He said, That is it; it will go to strangers. After awhile it began to rain, and he became very nervous and excited. The office was some distance from the house, but, in his slippers and dressing-gown, without his hat, he took me by the arm, urging me *to*, through the rain, to sign the deed. I entreated him by every argument not to compel me to the act. He only grew more vehement, and, in
271 dread from some accident befalling him from excitement, I accompanyed him and did what he asked. Afterward I returned to the house and found my stepmother and another lady sitting together. My stepmother looked up as I entered, and, seeing my face, said, I hope you have not been doing something you ought not to have done; and I replied, I have done what I was compelled to do. It was still raining, but I ordered my carriage and was taking leave of my stepmother when my father came in and urged me not to go. I told him I was going and would never return, and I never did. My father had written to me repeatedly that he wanted me to have the deed recorded, and stated if I did not he would put an overseer upon the place; that is, take it away from me; so Mr. Laughlin and I went up to Vicksburg and acknowledged the deed. I did not have an idea that there was any way in the world that it could be avoided. I never really believed that he would finally take the place from me.

272 Ans. to Int. 12. Absolutely. On the day of the sale Mr.

Johnathan McCaleb, my father, and I were sitting together, perhaps it was just before the sale. I was greatly distressed, for Mr. McCaleb was so, and my father remarked to me, I thought you were a braver woman. I told him I could hardly see how any one could be brave under the circumstances. He turned to Mr. McCaleb and said, I am buying in this property for Florida, and when the debts are paid will make out the title in her name. Mr. McCaleb asked, Why not in David's, as well? My father said, Because it would be liable for his debts.

Ans. to Int. 13. It was universal-y known and the bidding was greatly influenced by it, and all the gentlemen remarked that the property went exceedingly low because my father stated he was buying it in for my benefit.

Defendants' counsel declines to cross-examine this witness.

FLORIDA LAUGHLIN.

273 And I do hereby certify that the foregoing deposition was by me written down in the presence of said witness, and after having been read over in the hearing of said witness was by her signed in my presence.

And I do further certify that there was present at the taking of said deposition Murry F. Smith, Esq., of counsel for complainant, and Albert M. Lea, Esq., of counsel for defendant.

Witness my hand this 27 day of April, A. D. 1882.

J. M. McKEE, *Examiner.*

Filed May the 15th, 1882.

J. M. McKEE, *Clk.*

And on the 15 day of May, A. D. 1882, the deposition of E. C. Laughlin, Jr., a witness for the complainant in the above-stated cause, was filed in the office of the clerk of said court, and is in the words & figures following, to wit:

274 UNITED STATES OF AMERICA,
Southern District of Mississippi:

FLORIDA LAUGHLIN
vs.
JOE D. MITCHELL *et al.* } In Equity.

Be it remembered that on this 28th day of April, A. D. 1882, pursuant to notice duly given, there was produced before the undersigned, examiner in equity of the circuit court of the United States for the southern district of Mississippi, at Diamond landing, in said district, Rev'd E. C. Laughlin, a witness for the complainant in the above-stated cause, whose deposition will be read in evidence on the trial of said cause, who, being by me first duly sworn, in answer to the interrogatories and cross-interrogatories propounded to him, deposes and says as hereinafter written.

To Rev. Mr. LAUGHLIN:

Int. 1. What is your name, age, *and* occupation, and residence?

Int. 2. Did you know the late Mr. J. E. Davis?

Int. 3. Do you or not know anything about the execution
275 of the instrument marked Exhibit "E" to Bill by Mr. and Mrs. E. C. Laughlin in Decem., 1858? If yea state what you know as fully and particularly as you can.

Int. 4. Who was at Hurricane when you and Mrs. Laughlin went there, and who when you left?

Int. 5. Can you say whether or not Mrs. Laughlin's health was affected in any way after this visit to Hurricane; and, if so, in what way?

Cross-interrogatories:

X Int. 1. How long have you been an inmate of your aunt's family?

X Int. 2. Of what State are your aunt and uncle citizens and residents?

X Int. 3. What is the condition of your aunt's health now?

Answer to Interrogatories.

Answer to Int. 1. Name is Edmund C. Laughlin; age, 45; Diamond Place; occupation, the ministry.

Answer to Int. 2. Yes, sir.

276 Answer to Int. 3. I went with Mrs. Laughlin to Hurricane, as I understand she went for the purpose of seeing her father, who was reported sick. She came to me in the evening and told me I was to go back to Diamond Place and send my uncle down to Hurricane; I think this was the evening of the same day we went down to Hurricane. Mr. Laughlin went down the next morning to Hurricane, as requested; I am under the impression that they returned both that same day; the weather was very bad at that time. When they returned I noticed that something had happened to cause Mrs. Laughlin to look very sad, and I did not know what it was until she explained about the signing of the deed. I went to college early in the following year, and left Mrs. Laughlin still greatly depressed from the same cause.

Answer to Int. 4. Dr. and Mrs. Ledyard, Mr. Davis, Mr. Cox, and the family of Mr. Davis, composed of Mr. and Mrs. Davis, Joe and Lize Mitchell; I think that is all.

Answer to Int. 5. Her health was decidedly affected, so much so, as I understood from Mr. Laughlin, that he was obliged to take her away the next summer. I met them at Fredrick's Junction, and traveled with them through the summer, and I saw that Mrs. Laughlin's spirits were much affected.

277 Cross-examination by Mr. LEA, of counsel for def'ts:

Ans. to Int. 1. Over 30 years.

Ans. to Int. 2. Tennessee; he is a voter in Tennessee, I think: he

is not here; I do not know that he is a voter in Tennessee; do not know the *the* opportunity ever offered itself.

Ans. to Int. 3. I suppose I might say it is good.

E. C. LAUGHLIN, JR.

And I do hereby certify that the foregoing answers were written down by me in the presence of said witness, and after having been read over by me in his hearing the same was by him signed *by him* in my presence; and I do further certify that at the taking of said depositions there was present Murrey F. Smith, Esq., of counsel for complainant, and A. M. Lea, Esq., of counsel for defendant.

Witness my hand this 28th day of April, A. D. 1882.

J. M. McKEE, *Examiner.*

Filed May 15th, A. D. 1882.

J. M. McKEE, *Clk.*

278 And on the 15th day of May, A. D. 1882, the deposition of Jeff. D. Laughlin was filed in the office of the clerk of said court in said cause, and is in the words and figures following, to wit:

279 UNITED STATES OF AMERICA,
Southern District of Mississippi:

FLORIDA LAUGHLIN
vs.
JOE D. MITCHELL *et al.* } Equity.

Be it remembered that on this 28th day of April, A. D. 1882, pursuant to notice duly given, there was produced before the undersigned examiner in equity of the circuit court of the United States for the southern district of Mississippi, at Diamond landing, in said district, Jeff. D. Laughlin, a witness of the complainant in the above-entitled cause, whose deposition will be read in evidence on the trial of said cause, who, being by me first duly sworn, in answer to the interrogatories and cross-interrogatories propounded to him, deposes and says as hereinafter written:

Interrogatories Propounded to Mr. Jeff. Laughlin.

Int. 1. What is your name, age, residence, and occupation?

Int. 2. State whether or not you recognize the handwriting of the letter marked Exhibit "A" to direct int. to Mr. E. C. Laughlin; and, if so, whose handwriting is it? How came you to write or copy it?

280 Int. 3. State whether or not you are in the habit or have at different times copied letters, &c., for Mr. and Mrs. Laughlin.

Int. 4. Can you say what became of the original letter?

Int. 5. Is it not the habit or custom of Mr. and Mrs. Laughlin to mail the originals of which you have made copies?

Cross-interrogatories Propounded to Mr. Jeff. Laughlin.

X Int. 1. Do you know whether the original of this letter was ever sent to Mr. Davis?

X Int. 2. Please state when you made this copy. Did you copy postscript and the letter at the same time?

X Int. 3. Are you a citizen of Tennessee?

X Int. 4. Are you now a member of your aunt's family, and how long have you been a member of her household?

Mr. JEFF. D. LAUGHLIN, a witness for the complainant, being first duly sworn, in answer to the interrogatories propounded to him, deposes and says:

1. My name is Jefferson Davis Laughlin; age, 38 years on 28 next September; residence, Diamond Place; occupation, planter.

281 2. I have examined said exhibit; it is in my handwriting; I copied it at the request of my uncle, E. C. Laughlin, Sr.

3. Very frequently, whenever they have any letters or bills they wish copied they generally get me to do it.

4. I cannot.

5. It is their habit.

Cross-examination:

1. No, sir, I do not; I think it was; I am almost positive it was.

2. I don't remember; it was some years ago; think it was about 15 years ago, but am not certain. I remember that I had to go to my aunt to get her to help me make it out. I copied the letter and the postcript at the same time.

3. No, sir.

4. I am now; and on the 18th of July it will be 27 years.

JEFF. D. LAUGHLIN.

282 And I do hereby certify that the foregoing answers were written down by me in the presence of said witness, and being read over to him were by him signed in my presence. And I do further certify that at the taking of said depositions there was present Mr. Murry F. Smith, Esq., of counsel for complainant, and A. M. Lea, Esq., of counsel for defendant.

Given under my hand this 28th day of April, A. D. 1882.

JAS. McKEE, *Examiner.*

Filed May 15, 1882.

J. M. McKEE, *Clerk.*

And on the 15th day of May, A. D. 1882, the deposition of Louisa Neil, a witness for the complainant, was filed in the office of the clerk of said court, and is in the words and figures following, to wit:

283 UNITED STATES OF AMERICA,
Southern District of Mississippi:

FLORIDA LAUGHLIN
vs.
JOE D. MITCHELL *et al.* } Equity.

Be it remembered that on this 28th day of April, A. D. 1882, pursuant to notice duly given, there was produced before the undersigned, examiner in equity of the circuit court of the United States for the southern district of Mississippi, at Diamond landing, in said district, Louisa Neil, a witness for complainant in the above-
284 stated cause, whose deposition will be read in evidence on the trial of said cause, who, being by me first duly sworn, in answer to the interrogatories and cross-interrogatories propounded to her, deposes and says as hereinafter written.

Interrogatories Propounded to Louisa Neil.

Int. 1. What is your age, name, residence, and occupation?

Int. 2. How long have you resided at Diamond Place? Were you here when the sale of Diamond Place took place?

Int. 3. Did you know Mr. J. E. Davis or not, and did you or not know Mr. Johnathan McCaleb?

Int. 4. Did you or not hear Mr. Davis say anything on the day of the sale about his buying Diamond Place; if so, what did he say, when did he say it, and to whom?

Int. 5. Did or did not any other persons bid for the land and negroes at the sale besides Mr. Davis?

Int. 6. What property did Mr. McCaleb bid for?

Int. 7. Were you or were you not here at the time Mrs. Laughlin went to Hurricane and signed the instrument marked Exhibit "E" to the bill?

285 Int. 8. Why or for what purpose did Mrs. Laughlin go to Hurricane?

Int. 9. Can you say whether or not Mrs. Laughlin's health was in any way affected after this trip to Hurricane; and, if so, in what way?

Cross-interrogatories:

X Int. 1. Where did the sale of the place occur? How old were you then? Who made the sale? Who have you talked to recently about the sale.

X Int. 2. How often did Mr. J. E. Davis visit the Diamond Place?

X Int. 3. Can you recollect exactly what he said at the sale? Were you in the overseer's house when the sale was made? How many were in the house at the time?

Answers to interrogatories:

Ans. to Int. 1. Louisa Neil; residence, Diamond Place. I think I am 56 years old. I am a cook now for Mrs. Laughlin. Have been living on Diamond Place since I was ten years old.

Ans. to Int. 2. Yes, sir.

Ans. to Int. 3. I did. I used to belong to him and he gave
286 me to Mrs. Laughlin. I knew Mr. Johnathan McCaleb.

Ans. to Int. 4. I did. He said he bought it in for Mrs. Laughlin. He said it there where the sale was. There were a good many white people there, but they are all dead now. Mr. McDowell, the overseer on the place for 8 years, was there.

Ans. to Int. 5. None but Mr. Johnathan McCaleb.

Ans. to Int. 6. He did for the place. I don't remember whether he bid anything for the negroes or not.

Ans. to Int. 7. I was here; I did not go with her. Mr. Edmund Laughlin, Jr., went with her when she first went there. I think young Mr. Laughlin came back for him and he then went there; I think he did.

Ans. to Int. 8. Her father was very sick and he sent for her.

Ans. to Int. 9. She seemed to be out of her mind. I know they had to carry her away that summer; she was not well; she seemed to be grieving.

Cross-examination:

Ans. to X Int. 1. Over in the overseer's house, Mr. McDowell's, in the quarter. I was 20 years old then. I don't know who
287 sold the place, it has been so long. I have not talked to nobody about this matter recently until you all come. Mrs. Laughlin found out that I knew something about [it]; she thought I had forgotten it.

Ans. to X Int. 2. He used to come here right often to see his daughter.

Ans. to X Int. 3. I could no remember everything he said. I was not exactly in the house when the sale was made; I was on the outside; all Mr. McCaleb's people were in the house. There were over a hundred there, black and white.

LOUISA NEIL.

And I do hereby certify that the foregoing answers were written down by me in the presence of said witness, and, after having been read over by me in her presence, the same was by her signed in my presence. And I do further certify that at the taking of said depositions there was present Murry F. Smith, Esq., of counsel for complainant, and A. M. Lea, Esq., of counsel for defendant.

Witness my hand this 28th day of April, A. D. 1882.

J. M. McKEE, *Examiner.*

Filed May 15, 1882.

J. M. McKEE, *Clk.*

288 And on the 15th day of May, A. D. 1882, the deposition of Thos. Rigby, a witness for the complainant, was filed in said said cause in the office of the clerk of said court, and is in the words and figures following, to wit:

289 UNITED STATES OF AMERICA,
Southern District of Mississippi:

FLORIDA LAUGHLIN
vs.
JOE D. MITCHELL *et al.* } Equity.

Be it remembered that on this 27th day of April, A. D. 1882, pursuant to notice duly given, there was produced before the undersigned, examiner in equity of the circuit court of the United States for the southern district of Mississippi, at Vicksburg, in said district, Mr. THOS. RIGBY, Esq., a witness for the complainant in the above-stated cause, whose deposition will be read in evidence on the trial of said cause, who, being by me first duly sworn, in answer to the interrogatories and cross-interrogatories propounded to him deposes and says, as hereinafter written:

Int. 1. What is your name, age, residence, and occupation?

Int. 2. Are you or not familiar with the value of slaves and land in 1846 in this section of the country—that is to say, in Warren county, Mississippi? If yea, state the means and extent of your kno-ledge, and whether you about that time dealt in lands or negroes.

290 Int. 3. What was the average price of negroes in this county then?

Int. 4. Would you or not consider the prices set forth in the paper herewith handed you marked Exhibit "A" to this interrogatory full and fair values for the negroes therein described? Please answer as to each lot separately.

Int. 5. What was a fair value in 1846 for a negro man, say, from 16 to 40, and for a woman from 16 to 40?

THOS. RIGBY, a witness for the complainant, being by me first duly sworn, in answer to the interrogatories propounded to him deposes and says:

Ans. to Int. 1. Name, Thos. Rigby; residence, Vicksburg; age, 79 years. I am now in no regular business.

Ans. to Int. 2. I was pretty familiar with the value of negroes in this section of the country in 1846. I did not deal so much in lands in Warren county as in the swamp lands. I purchased negroes about that time for my own use. I did not sell negroes.

Ans. to Int. 3. Witness here produces one original bill of
291 sale for two negroes, dated 26 Oct., 1847, mad- to him, ages respectively 22 and 17 years, for the sum of $1,300.00 cash for the two. Witness further states that he bought these negroes for the reason that he thought them cheap. There was but little difference in the value of negroes in the years 1846 and 1847. They were a shade higher in 1847.

Ans. to Int. 4. To the first lot he answers as follows: "If they were ordinary-looking negroes I think that price would be extremely low; I should think at a very low average they would be worth $400 apiece." To second and third lot- witness answers as follows: "On the same average these would not be so low." To the

fourth lot witness answers: "Extremely low, if an able-bodied negroe." To the fifth lot witness answers: "That is very low." To the sixth lot witness answers: "At a fair average that lot would be worth $400 each." To the seventh lot witness answers: "That lot was very low; the woman was worth the price of all." To the eighth lot witness answers: "That was a reasonable price." To lot
292 9 witness answers: "That is another evidence that my average of $400 is too low. I would say anything between 16 and 40 was worth $500.00, if an able hand." To the 10th lot witness answers: "That is extremely low, unless there was some deficiency in the woman." To the 11th lot witness answers: "That was very low." To the 12th lot witness says: "That was very low for that lot I should think." To the 13th lot witness says: "That was extremely low." To the 14th lot witness says: "I should think $400.00 would be a low average for that lot." To the 15th lot witness answers: "The three children would be worth $250 each; the lot would not be high at $400 each." To the 16th lot witness answers: "That was very low."

Ans. to Int. 5. I should suppose $500 would be a very fair average for a man, and about the same for a woman.

THO. RIGBY.

And I do hereby certify that said deposition was written down by me in the presence of said witness, and after having been read over to him the same was signed by him in my presence. And I do further certify that at the taking of said deposition there was present Murry F. Smith, Esq., of counsel for complainant, and A. M. Lea, Esq., of counsel for defendants.

Given under my hand this 27th day of Apr'l, A. D. 1882.

J. M. McKEE, *Examiner.*

293 EXHIBIT "A" to interrogatory 4, Dep. of Thos. Rigby.

1	Joe, aged about 41 years Mary Jane (his wife), 22 years Amelia (daughter)	1 family.	At $1,311 00
	Austin, aged 42 years Sylvia, " 37 " Priscilla, " 19 " Ben, " 11 "	1 family.	
2	Betsy, " 13 " Alice, " 13 " Kate, about 9 " Harry, age- 7 "	1 family.	At $2,300 00
	John, " 31 " Judy Black, " 20 " Dave, Edy, Jennette---Children	1 family.	At $1,107 00

4	Tom, aged 35 years	--	At		$400 00
	Cupid, " 28 "	1 family.	At		$1,152 00
	Caroline, " 25 "				
5	Fanny, " 7 "				
	Hannah, " 3 "				
	Vina, " 43 "	1 family.	At		$251 00
	Jack, " 22 "				
6	Elizabeth, " 17 "				
	Noel, " 11 "				
7	Mahala, " 28 " and children.	1f amily.	At		$550 00
	Gustin, age- 6 "				
	Louise, age- 3 years				
294	8 Polly, " 27 "	--	At		$500 00
	9 Mary Jane, " 22 "	--	At		$501 00
	Eliza, " 28 "	1 family.	At		$475 00
	Jessie, Children				
10	Ellen, Children				
11	Winney, aged 28 years	--	At		$700 00
	Willie, " 70 "	--	At		$002 00
12	Barley, " 54 "				
	Rhody, " 38 "	1 family.	At		$601 00
13	Priscilla, " 18 "				
	Thaddeus, " 12 "				
	Anna, aged 45 years	1 family.	At		$1,701 00
	Esther, " 20 "				
14	Caroline, " 18 "				
	Field, " 22 "				
	Betsy, " 14 "				
	Maria, " 45 "	1 family.	At		$1,500 00
	Lilly, " 25 "				
	Rose, " 24 "				
15	Anthony, " 12 "				
	Henry, child.				
	Eliza, aged 20 "				
	Angelina, child				
	Kitty Jane, child				
16	Hannah, aged 54 years	--	At		$020 00
					$12,771 00

Exhibit "A" to interrogatory 4.

J. M. McKEE, *Examiner.*

295 And on the 15th day of May, A. D. 1882, there was filed in the office of the clerk of said court the deposition of Samuel Morrow, a witness for the defendant in the above-stated cause, in the words and figures following, to wit:

296 UNITED STATES OF AMERICA,
Southern District of Mississippi:

FLORIDA LAUGHLIN
vs.
JOE D. MITCHELL *et al.* } Equity.

Be it remembered that on this 27th day of April, A. D. 1882, pursuant to notice duly given, there was produced before the undersigned examiner in equity of the circuit court of the United States for thes outhern district of Mississippi, at Vicksburg, in said district, Samuel Morrow, a witness for the defendant in the above-stated cause, whose deposition will be read in evidence on the trial of said cause, who, being by me duly sworn, in answer to the interrogatories and cross-interrogatories propounded to him, deposes and says as hereinafter appears.

Interrogatories Propounded to Sam'l Morrow.

Int'y 1st. What is your name, residence, and occupation?

Int'y 2. Where did you reside in the years 1846, 1847, and 1848, and what was your occupation during that time?

297 Int'y 3. Are you familiar with the plantation known as Diamond Place, in Warren county? When did you first visit said plantation, and if you were ever employed there state how and in what capacity. How long were you so employed?

Int'y 4. Do you know anything of the value of lands and negroes in that section in the years 1846 and 1847? During those years how did land and negroes sell?

Int'y 5. From your knowledge of the Diamond Place as it was in 1846, and the character of the negroes on it, and judging from the sales of lands of similar character and similarly situated, was the sum of $28,000 a low or fair or high price for the Diamond Place, with the negroes then on it, at that time?

Int'y 6. How much open land was there on the place then?

Int'y 7. What kind of negroes were there on the place then?

Int'y 8. To whom were the crops raised in the years 1853, 1854, and 1855 shipped, and for whose account?

Int'y 9. During all the years of your employment on the place who was owner and who did you regard as the real owner at this time?

298 Int'y 10. Did you ever converse with any person or persons who were present at the sale of this place to Mr. J. E. Davis. If yea, give their names. Are such persons now living; if dead, when did they die?

Int'y 11. How did cotton sell during the years 1846, 1847, and up to 1859?

Cross-interrogatories:

X Int'y 1. Who employed you as manager on the Diamond Place?

X Int'y 2. Who did you report to and who paid your salary; who exercised general control over the place?

X Int'y 3. You say that there was a rumor that Mr. J. E. Davis owned the place; did he at any time interfere with your management or attempt to exercise control over it?

X Int'y 4. From whom or what persons and how many persons did you acquire knowledge of this rumor?

X Int'y 5. Did you or not hear at the same time or at any time that Mr. J. E. Davis had bought the place and slaves at said sale for the benefit of his daughter, Mrs. Florida Laughlin, and that she was to have time to work out the debt on the place?

299 X Int'y 6. Can you say that you acquired this information from Mr. T. McDowell?

X Int'y 7. When did you last converse with McDowell about the matter?

X Int'y 8. Can you say positively that this was McDowell's idea of the purchase by Mr. J. E. Davis?

X Int'y 9. Is it not a fact that in 1841 and 1842 and 1843 that lands and slaves in this county were very low, and that about 1844 they commenced to appreciate in value, and that in 1846 they commanded a good price?

X Int'y 10. Would you say that the sum of 12 or 13 thousand dollars was a fair price for the negroes or Diamond Place in 1846?

X Int'y 11. Would you say that the sum of $15,000, on a credit of, say, two years, and no money to be paid until Jan., 1847, was a fair price for Diamond Place in June, 1846?

X Int'y 12. What was the character of improvements on Diamond Place when you were there?

SAM. MORROW, a witness for the defendants, being duly
300 sworn, in answer to the interrogatories propounded by Mr. LEA, of counsel for defendants, deposes and says:

Ans. to Int. 1. Name is Samuel Morrow; a farmer by occupation; residence, New Carthage, La.

Ans. to Int. 2. I resided part of the time in the year 1846 in Leake Co. and part in Madison Co., Miss., and was trading in negroes some and planting some. I was in Madison and Leake counties in 1847, and went through Texas that year. In 1848 I came to live on the Miss. river at Young's Point. That year I was managing the plantation of Mr. Young at Young's Point.

Ans. to Int. 3. I am familiar with that plantation or was when [I] was living there. I went down there & commenced business there about January, 1853. I was employed there as manager of that plantation during the years 1853, 1854, & 1855.

Ans. to Int. 4. I can't say that I do down there, for I was not there then. The value of lands were low all over the country at that time. Property of every grade was low then, cotton low, negroes

low, horses, mules, and everything very low. Up to the crash of 1837 everything was high; after that everything went down.

301 Ans. to Int. 5. I should think, from my knowledge of other property, that that was as much as it was worth at that time, cash.

Ans. to Int. 6. I think there must have been about 375 acres. I think that about as much as was in cultivation at that time from the signs there when I went to that place in 1853.

Ans. to Int. 7. The negroes were a very ordinary looking set. They were very good nrgroes to work. In the market they would be considered very ordinary—that is, they were not first class; mostly women and children.

Ans. to Int. 8. I think they were shipped to Wright, Allen & Co. I am very sure they [were] shipped to Wright, Allen & Co., and think to Mr. Laughlin's own account.

Ans. to Int. 9. It was the rumor there that it belonged to Mr. Joseph E. Davis. According to common report Mr. Joseph E. Davis is the owner of it; that was the general rumor there. I only regarded the ownership of the place in Mr. Davis from general rumor. I never had any business with him—Mr. Davis; only Mr. Laughlin. Mrs. Laughlin used to talk to me about her father's humane treatment of his negroes, and said he would not like to hear of

302 the negroes being treated badly up there. I do not know whether she meant by this that the negroes were his negroes or whether she simply meant that as her father was very humane to negroes she would not like to have him hear of their being badly treated on Diamond Place. Whenever the negroes were pressed too hard, or, as they thought, ill treated without provocation, they would threaten to run off and go to Mr. Davis. They sometimes used to run off and go to Mr. Davis. On one occasion, when Mr. Laughlin was absent, a negro ran off to Mr. Davis. I sent to him asking the return of the negro, and Mr. Davis returned the negro, with a note to me not to mistreat the negroes; to correct them if they needed it, but to treat them humanely. The negro had made a heavy complaint against me, which Mr. Davis said he did not know whether it was true or not, but for me to treat them humanely.

Ans. to Int. 10. I think Jim McDowell told me he was present at the sale. I think Mr. John Henderson told me he was at the sale. They are both dead now. I think Mr. Henderson died last fall two or three years ago. I think Mr. McDowell died last fall a year ago.

303 Ans. to Int. 11. Cotton was worth then from four to six cents per pound. In 1848 it was a shade higher. Cotton commenced going up in 1848. From 1849 to 1858 cotton ranged from seven to ten cents per pound.

Cross-examination by MUR-Y F. SMITH, Esq., of counsel for complainants:

Ans. to X Int. 1. Mr. Laughlin.

Ans. to X Int. 2. Mr. Laughlin. Mr. Laughlin and Mrs. Laughlin exercised general control over the place together.

Ans. to X Int. 3. No, sir.

Ans. to X Int. 4. I don't know as to that; there was a good many. Mr. John Henderson told me more about it than anybody else. I used to see more of him than any one else.

Ans. to X Int. 5. I don't know about her having time to work out the debt. I understood that he intended to give it to her; in other words, that it was for her; that he intended the property for his daughter, whether to give to her for good or only for her lifetime I don't know. My idea was that as she had no heirs he in-
304 tended she should keep it as long as she lived, anyhow. That was an idea of my own after hearing it talked about.

Ans. to X Int. 6. I had conversations with McDowell and Henderson, and I think I got about the same idea from McDowell as from Henderson. Mrs. McDowell, I think, was not on good terms with Mrs. Laughlin after Mr. McCaleb's death. I think the idea I have about the purchase by Mr. Davis is the same as was entertained by Mr. McDowell.

Ans. to X Int. 7. We had several conversations about the matter. I don't know as he said anything to me about the sale since the war.

Ans. to X Int. 8. I think so from what he said about it.

Ans. to X Int. 9. Yes, sir; in 1844 they commenced to appreciate very slightly; in 1846 they did not command a good price.

Ans. to X Int. 10. Negroes, big and little, taking families as they come, would not at that time average more than $275.00 or $300.00 around.

Ans. to X Int. 11. I can't answer that question directly, but I think $10.00 per acre for the whole place through would be a fair price.

305 Ans. to X Int. 12. The improvements when I went there were all new except the gin.

SAM'L MORROW.

And I do hereby certify that all the foregoing answers of said witness were by me written down in his presence, and, after having been read over in the hearing of said witness, the same *was* by him signed by him in my presence. And I do further certify that there were present at the taking of the deposition Murry F. Smith, of counsel for complainant, and A. M. Lea, Esq., of counsel for defendants.

Given under my hand this 27th day of April, A. D. 1882.

J. M. McKEE, *Examiner.*

Filed May the 15th, 1882.

J. M. McKEE, *Clk.*

And on the 15- day of May, A. D. 1882, the deposition of Mary E. Hamer, a witness for the defendant- in said cause, was filed in the

office of the clerk of said court, in the words and figures following, to wit:

306 UNITED STATES OF AMERICA,
Southern District of Mississippi:

FLORIDA LAUGHLIN
vs.
JOE D. MITCHELL *et al.* } Equity.

Be it remembered that on this 28th day of April, A. D. 1882, pursuant to notice duly given, there was produced before the undersigned, examiner in equity of the circuit court of the United States for the southern district of Mississippi, at Vicksburg in said district. Mrs. Mary Elizabeth Hamer, a witness for the defendant-, whose deposition will be read in evidence on the trial of the above-stated cause, who being by me first duly sworn, in answer to the interrogatories and cross-interrogatories propounded to her did depose and say as hereinafter appears.

Interrogatories Propounded to Mrs. Hamer.

Int'y 1. What is your name and residence, and what relation do you bear to Mr. Joe E. Davis, deceased?

Int'y 2. Please state the character of the relations that existed between you and your grandfather—were they intimate and confidential?

307 Int'y 3. Do you know anything of the preparation of a holl*o*graphic will by your grandfather in the year 1865; where is the original draft of said will now?

Int'y 4. State fully any conversation you may have had with Mr. Davis in connection with this will, or any subsequent one, and especial-y with the disposition made therein of the Diamond Place.

Int'y 5. Please state what you know of the relation that existed between Mr. J. E. Davis and Mrs. Varina Davis.

Int'y 6. Was the matter of the ownership of the Diamond Place a subject of frequent discussion in the family of Mr. J. E. Davis? Did you ever hear Mr. Davis or any other member of the family say that the title to the place was held in trust by Mr. Davis for his daughter? Did you ever hear it said by Mr. Davis, or any member of the family, that Mrs. Laughlin was to have the title upon payment of an indebtedness due from her to her father? Please state fully any conversations you may have had with Mr. Davis on the subject of the Diamond Place and Mrs. Laughlin's interest therein.

308 Int'y 7. Are you familiar with the handwriting of Mrs. Laughlin? Examine these letters, marked Exhibits "A," "B," and "C" to this answer, and say who wrote them.

Int'y 8. In any of these conversations to which you have deposed in connection with the two wills did Mr. Davis say that Mrs. Laughlin had or claimed to have any interest in or right to the Diamond Place?

Int'y 9. State how long you were a member of your grandfather's family.

Cross-examination of Mrs. HAMER:

X Int'y 1. Who was present when the conversation took place about the holl*o*graph- will?

X Int'y 2. Was not Mr. J. E. Davis a man of rather violent prejudice—one who could or would either dislike a person very much or like very much?

X Int'y 3. Was he not apt to allow himself to be influenced by his prejudice to such an extent as to probably cause him unconsciously to do wrong to those whom he disliked?

309 X Int'y 4. Can you give now or recall any of the expressions of bitterness that he gave vent to in alluding to Mrs. Laughlin?

X Int'y 5. Do you know Mr. Laughlin, and can you state whether or not Mr. Davis had any reason to conceive this dislike to him from any conduct of Mr. Laughlin to Mr. Davis *of* from any want of respect or courtesy on his part to Mr. Davis?

X Int'y 6. Please state what kind of a man Mr. Laughlin is—whether he is not gentleman-y in deportment, correct in principle, and very honest and upright in all his dealings.

X Int'y 7. Please examine letter herewith handed you, marked Exhibit "A" to 7 X int., and state in whose handwriting it is in.

Ans. to Int. 1. My name is Mary Elizabeth Hamer; residence, Hurricane plantation, Warren county, Miss.; I am a granddaughter of Joseph E. Davis.

Ans. to Int. 2. They were most intimate and confidential and tender in their nature.

310 Ans. to Int. 3. I do; my grandfather wrote the will in 1865, in Tuscaloosa, Ala. After he had written it he called me in and told me that he had prepared his will and wished me to hear him read it and to know what I thought of it. In regard to the bequest to Mrs. Laughlin of a life interest in the estate of Diamond Place, *or the life interest in estate of Diamond Place*, I remonstrated with him on the subject and urged him to give her a title in fee-simple, to which he replied, You don't know what you are talking about. He seemed much annoyed and expressed himself very bitterly against the Laughlins—her husband and family. I do not know where the original of said will [is]. I have not seen it since it was used in the suit of Mr. Jefferson Davis against the estate of Mr. Jos. E. Davis.

Ans. to Int. 4. He gave me his reason for not willing the Diamond Place to Mrs. Laughlin, that the Laughlins, her husband and family, were nothing to him and [he] did not wish to leave his property to them. In 1869, when Mr. Davis was making his last will, which I wrote at his dictation, I again urged him to give Mrs. Laugh-

311 lin a title in fee-simple, assuring him that Hurricane plantation would be sufficient for my brother and myself, but he positively refused to do so, and said that he had always considered that his daughter had degraded herself by marrying a man so far inferior to herself, and he would not leave his property to her, as she would bequeath it to them—that is, to the Laughlins.

Ans. to Int. 5. There was a feeling of the greatest bitterness, existing so far back as I can remember, between them. My grandfather frequently expressed himself to members of the family that he considered her very untruthful. I never have heard of any confidential relations existing between them. I never knew of his talking of his business affairs to Mrs. Jefferson Davis, and I am under the impression that he was not in the habit of discussing his business with many persons. He talked very freely with me upon all matters of his business for many years previous to his death, and just before his death, after reading his will to Dr. Bowmar, his executor, he remarked in my presence, "Lize can give you any
312 information which you cannot find in my will, as she knows more about my business than any one else." After Mr. Jefferson Davis returned to Vicksburg and, as executor, examined his brother's papers, he told me that Dr. Bowmar had said his brother advised him to apply to me for any information they might require which was not contained in his papers.

Ans. to Int. 6. Yes, sir. The matter of the ownership of Diamond plantation was a frequent subject of discussion in Mr. Davis' family as far back as I can remember. I never heard Mr. Davis or any other member of the family say that Mr. Davis, my grandfather, held the title of Diamond plantation in trust for Mrs. Laughlin; do not remember ever to have heard it until this morning. I never heard Mr. Davis or any member of the family say that Mrs. Laughlin was to have the title upon the payment of an indebtedness due from her to her father. I think Mr. Davis and myself discussed the question of Mrs. Laughlin's interest in Diamond Place several times, but always with the result already given.

313 Ans. to Int. 7. Perfectly so; I corresponded with her for many years. The letters here handed me, marked Exhibits A, B, & C to this answer, were written by Mrs. Laughlin.

Ans. to Int. 8. No, sir; he never said anything to that effect.

Ans. to Int. 9. From the time of my mother's death, which occurred when I was 4 or 5 years old, I held the position of his child or his cherished grandchild, and was rarely separated from him, excepting three years *of which* I was at school, until the time of his death.

Cross-examination:

Ans. to X Int. 1. No one at all; my grandfather and myself were alone.

Ans. to X Int. 2. He was of violent prejudices, but he was a very just man, so far as I could judge.

Ans. to X Int. 3. I know of no instance when he did it, and could not say it was the case.

Ans. to X Int. 4. Yes, sir; he called Mr. Laughlin and family "low Irish," and said that Mr. Laughlin was in every respect inferior to his daughter, Mrs. Laughlin.

314 Ans. to X Int. 5. I have known Mr. Laughlin since I was a small child, and have always been very much attached to him, as he was kind and affectionate to me. I think my grandfather's prejudice against Mr. Laughlin, as I have already stated,

was because he considered him my aunt's inferior intellectually, and my grandfather was very proud of his daughter and mortified and disappointed in her marriage. If there were other reasons I did not know or do not remember them.

Ans. to X Int. 6. I have seen little of my uncle, Mr. Laughlin, since I was grown, and know nothing of his character as a business man.

Ans. to X Int. 7. It is in the handwriting of my brother, Joseph Davis Mitchell.

M. E. HAMER.

And I do hereby certify that all the foregoing answers of said witness were by me written down in *his* presence, and after having been read over in the hearing of said witness the same were by her signed in my presence, and I do further certify that there
315 was present at the taking of the above depositions Murry F. Smith, Esq., of counsel for complainants, and A. M. Lea, Esq., of counsel for defendant-.

Given under my hand this 28th day of April, A. D. 1882.

J. M. McKEE, *Examiner.*

Filed May the 15th, 1882.

J. M. McKEE, *Clk.*

EXHIBIT "A" to answer to 7th Int., Dep. of Mrs. M. E. Hamer.

DIAMOND PLACE, *Jan. 29th*, '69.

DEAR PAPA: I read with painful surprize your reply to my letter with regard to the purchase of the place. The terms you propose being such as are so far beyond any possibility of our meeting I must suppose you did not wish us to become the owners. It appears to me that no one in his senses would for a moment think of giving sixty thousand dollars for a place that twenty years ago, when twice as valuable both by levies and negroes, sold for twenty-eight thousand. I can't understand, papa, how it is that you have seemed to wish that all and every other relation should be enriched either at my
316 expense or with a perfect indifference to my feelings. I cannot see why Dr. Mitchell's family, even those who have no more claim on you than other distant connections, should prove always the principal and favorite recipients of your favours. It may be right; it may be natural or convenient; but I have neither the brains or heart to comprehend it. The Adams place, as fine a one for all planting purposes, is offered for sale to Maj-r Barr for seventeen thousand dollars by the family. I believe the proposal will be accepted. It has been one of my fondest wishes to have a right to be buried here, which of course is now impos-ible. I should not like for the sake of any family to see my husband a drudge the remainder of his life, nor feel that when I die his interest here dies with me; but there seems no other alternative unless he uses his slender means in the purchase of a home somewhere else and leases out this. I have no other interest nor wish any that is not bound up with his. Of course, as the place is yours, you can dispose of it

as you will. But, papa, it appears to me that I should prefer when my eyes are closing on this life to have made some heart into
317 whom my own flowed happy than to have rendered remoter ones rich. You are the judge. I have no more to add, except that I hope God will bless you here and hereafter, which is the best, the only best, which can come to any one. Farewell.

As ever, your affectionate daughter,

FLORIDA.

EXHIBIT "B" to answer to 7th Int. of deposition of Mrs. M. E. Hamer.

DIAMOND PLACE, *Feb. 12th*, '69.

DEAR PAPA: I have been very much pained by the thought that I had imposed upon you the necessity of writing—a habit that I was aware you had some time ago abandoned. I am the more sorry inasmuch as you were not well. I hope you will forgive my unintentional fault. In reference to Dr. Mitchell's family, for whom I have never entertained any but kindly feelings, especially towards my sister's children, who have ever been tenderly regarded by me—
318 I think also by all in whom I have any interest —. I had heard, however, that in your will you had assigned this place to Jo. Mitchell, and as I hardly supposed any woman would like to know that at her death her husband would be dispossessed in favor of any other relation, however near or dear, I could not but be hurt. It has been Mr. Laughlin's dearest wish to purchase the home so long endeared to us, when your proposition was made, and he had a hope that the terms would not prove beyond any prospect of fulfilment. It was to us both a very great gratification; but, papa, there is not a possession on earth that would atone to me if it had cost you a moment's pain. I know you will believe this, as my whole life has shown its truth. I may be morbid in feeling, may often err in judgment and true knowledge, but not because I fail to find the true source and issue of both. One, even an imaginative and sensitive nature, can scarcely have lived to my years without some sort of chart or rule of life by which to judge themselves and others. Mine may; I often think it has been untrustworthy, but it was the best I could find. Somewhere, papa, we shall find one better defined, and, on my
319 part, more perfectly followed, but not yet, not here. I have you in my prayers always, and should the night fall first on the one or the other let us try to be ready for it. It is the only hope for you, the only one for me, for us all. I think in one thing at least "I can from the depths of my soul" say I have coveted no man's silver or gold or apparrel, but I have coveted what is of far greater value, an undistrusted or distrustful affection. Papa, do not consider all this mere morbid feeling. It is the cry of every human heart that longs to do right, and yet not live quite alone. I should have written by Jeff. yesterday, but did not know in time that he was leaving. I had a kind letter from cousin Hugh lately. He is busy with contracts for the year's laborers, but the same true and manly heart shines in every line. Mr. Laughlin is also in the same unsettled

condition, as negroes demand exorbitant wages and are ready to revolt at any moment. Please give my love to Lise and other members of the family. God bless you, papa. Let me know if you are quite well by Jo.

Ever your effectionate daughter, FLORIDA.

320 EXHIBIT "C" to answer to 7th Int. of deposition of Mrs. M. E. Hamer.

DIAMOND PLACE, *July 26th*, '69.

MY DEAR FATHER: I have not written to you for some time past, not because I had no wish to do so, but that it seemed to me from the tone of your last letter you intended our correspondence to cease; why, I do not understand, for certainly I never dreamed that what I said in regard to the sale of the place could possibly displease you. If I mistake your words I hope you will forgive me, for I cannot think without pain of your going on a long journey dissatisfied with or disappointed in me. I know you do not understand me very thoroughly, papa, and never did nor will, but I am the greater looser thereby, as it with-olds from me your confidence. Something in me always revolts against explanations of my motives and feelings when I think either have met with injustice, and this has often caused me great distress. If this be a fault, it is one so thoroughly engrafted as to leave me no hope of its eradication, but I write only to
321 say, dear papa, that I hope you may have a pleasant trip and return refreshed and invigorated. I had a letter from Lise a day or two ago, which I will answer soon, hoping in her reply to hear of your safe arrival in Kentucky. May God bless you, dear papa, and keep you well, in which prayer Mr. Laughlin unites with me. Answer.

Affectionately, your daughter, FLORIDA.

EXHIBIT "A" to 7th X Int. of deposition of Mrs. M. E. Hamer.

VICKSBURG, MISS., *Jan. 25th*, 1869.

MY DEAR DAUGHTER: Your letter by Jeff. Laughlin has just been received, in which you request an immediate answer. In my suggestion to Mr. Laughlin I was influenced by the consideration that in the course of nature my life was drawing to a close, and the propriety of having all the affairs of this life so arrange- as to have no difficulty with others in settling my affairs after I was gone. It is unpleasant to have business affairs with our relations. I wish to make the terms as easy and satisfactory as they can be made.
322 Before the war I considered the place worth one hundred dollars per acre; that price I refused for the Hurricane, and since sold it to B. Montgomery & Sons for $75.00 per acre, on a credit of nine years, they paying interest of six per cent. in coin. I suppose the Diamond Place would be worth half of what it was before the war. I know it is the best place in Mississippi of its extent. I wish to make the terms easy, as I wish the family to continue the owners. I should be pleased to hear any suggestion from you and Mr. L., and after due consideration of the matter it might be well

for you to come up, as I should be very glad to see you apart from business matters. We are all in our usual health: Lize very much occupied with her opera. I have found Home Studdies of the Bible interesting and instructive, and have furnished the evenings reading since you sent them to me, and have felt ready to say with Agrippa, "Thou almost persuadest me."

With affectionate regard, FATHER.

P. S.—I notice in your letter the remark that I need not anticipate any opposition or objection from you. I was very far from supposing there could be any; but, on the contrary, suppose that it would be entire- in accordance with your wishes, as your rights would not be affected.

323 And on the 15th day of May, A. D. 1882, the deposition of Mrs. Lucy Mitchell, a witness for the defendant in said cause, was filed in the office of the clerk of said court in the words and figures following, to wit:

324 UNITED STATES OF AMERICA,
Southern District of Mississippi:

FLORIDA LAUGHLIN
vs.
JOE D. MITCHEL *et al.* } Equity.

Be it remembered that on this 27th day of April, A. D. 1882, pursuant to notice duly given, there was produced before the undersigned, examiner in equity of the circuit court of the United States for the southern district of Mississippi, at Vicksburg, in said district, Mrs. Lucy Mitchell, a witness for the defendant- in the above-stated cause, whose deposition will be read in evidence on the trial of said cause, who, being by me first duly sworn, in answer to the interrogatories and cross-interrogatories propounded to her deposes and says as hereinafter written.

Interrogatories Propounded to Mrs. Lucy Mitchell.

Int. 1. State your name and residence.

Int. 2. Are you related to Joe E. Davis, deceased?

Int. 3. Were you present at the Hurricane Plantation in December, 1858?

325 Int. 4. Have you any recol-ection of a visit there about this time by Mrs. Laughlin and her husband and the sign*ature* by them of an instrument relating to the Diamond Place? State fully all you know in regard to this matter.

Int. 5. Did Mrs. Laughlin, during this visit, state to you or to any one else, as far as you know, that she was induced to sign this instrument by force, threats, or compulsion used against her by her father?

Int. 6. Did you ever hear any such statement made by any member of the household or any one else at that time or any subsequent occasion?

Int. 7. How long did Mrs. Laughlin remain at Hurricane after she signed the instrument?

Int. 8. What was the state of Mr. Davis' health at this time?

Int. 9. Who composed the family at Hurricane at that time?

Int. 10. What were the relations existing between Mr. Davis and Mrs. Varina Davis at this time? Were they cordial and confidential or otherwise? Was he in the habit of talking to her about his business affairs?

326 *Cross-Interrogatories Propounded to Mrs. Lucy Mitchell.*

X Int. 1. What relation are you to Mr. Joe D. Mitchell?

X Int. 2. Where were you at the time the deed was signed, in 1858—that is, what part of the residence of Mr. J. E. Davis?

X Int. 3. In what part of the residence did Mr. Davis and Mr. and Mrs. Laughlin converse about the deed? When was the deed signed?

X Int. 4. Can you say how long it was after the deed was signed before Mrs. Laughlin was seen by you?

X Int. 5. Who was present when Mrs. Laughlin came into the room?

X Int. 6. Do you recollect whether or not any conversation took place between Mrs. J. E. Davis and Mrs. Laughlin when she came into the room?

X Int. 7. Can you recollect whether or not any such conversation as this took place: Mrs. J. E. Davis: "You have been doing something you ought not to have done." Mrs. Laughlin, in reply: "I have done what I was compelled to do."

327 X Int. 8. Can you say that such a conversation did not take place?

X Int. 9. Was not Mrs. Laughlin in tears when she entered the room?

X Int. 10. Did Mr. J. E. Davis enter the room while Mrs. Laughlin was there?

X Int. 11. Did not Mrs. L. order her carriage and leave within a very short time?

X Int. 12. Did not Mrs. L. cease her visits to Hurricane after the events you have narrated?

X Int. 13. What time in 1859 did he leave Hurricane for Europe, and when did he return, and did he then visit Hurricane?

X Int. 14. Is it not a fact that after the signing of the deed Mrs. L.'s health became very bad, and that she was reduced to a very low state of health?

X Int. 15. Where did you reside at this time—that is, in Dec., 1858—and what was your place of residence prior to and subsequent to this time?

X Int. 16. What was your age at that time—that is, in 1858?

328 X Int. 17. Did you or not hear it said—in the family—that Mr. J. E. Davis had bought this place for the benefit of Mrs. L., and that it would be hers as soon as the debt was repaid Mr. J. E. Davis?

Re-examined by counsel for defendants:

Int. 1. At the time the deed was signed was Mrs. Laughlin at the Hurricane in attendance upon her sick father, or did she visit there on this business?

Mrs. LUCY MITCHELL, a witness for the defendant-, being first duly sworn, in answer to interrogatories propounded to her answers and says:

Ans. to Int. 1. Name, Mrs. Lucy Mitchell; residence, Vicksburg.
Ans. to Int. 2. I am his niece.
Ans. to Int. 3. Yes, sir.
Ans. to Int. 4. I was there on a visit at that time, and Mrs. Laughlin and her husband came there together. She wished to have the
329 title of the Diamond Place given to her by her father and he refused. I was not in the room when any instrument was signed relating to the Diamond Place, but was in the house, and know what was going on; know that such an instrument had been signed, and remained at the house about ten days thereafter.
Ans. to Int. 5. No, sir; she did not.
Ans. to Int. 6. No, sir; I was at the Hurricane some ten days after this occurrence, and made frequent visits there afterwards, and heard the matter frequently discussed in the family. I know she was very much dissappointed at uncle Joe's refusal to give her the title, and she was very angry also. She said that he had treated her very unkindly or very unjustly.
Ans. to Int. 7. As well as I recollect, she left there the next day, but I may be mistaken in this.
Ans. to Int. 8. He was in his usual health. His health was never very robust. He was a delicate man, but he was as well as usual.
Ans. to Int. 9. I don't think there was any one there except Mr. Davis, his wife, and my mother.
330 Ans. to Int. 10. They were civil to each other, but there was no cordiality existing between them. Mr. Davis did not admire her character. He never talked to any one of his business affairs, and especially to her.

Cross-examination by MURRY F. SMITH, of counsel for complainant:

Ans. to X Int. 1. I am his stepmother.
Ans. to X Int. 2. I was in the back parlor, general-y called the "tea-room."
Ans. to X Int. 3. In his office—there were two offices—the old office in the house and the new office in the yard. In the winter Mr. Davis general-y used the old office and in the summer the new office. I cannot say which office they were in; they may have gone from the old office to the new office.
Ans. to X Int. 4. I don't think it could have been more than a few minutes. I think she came immediately into the room where we were.
Ans. to X Int. 5. Mrs. Joseph E. Davis and myself.

331 Ans. to X Int. 6. No, sir; if it was some ordinary conversation that did not refer at all to what had happened.

Ans. to X Int. 7. No, sir; I do not recollect it.

Ans. to X Int. 8. I don't remember it all; my recollection is that the conversation was diverted. I know Mrs. Davis did not wish to talk with her upon the subject.

Ans. to X Int. 9. No, sir.

Ans. to X Int. 10. No, sir.

Ans. to X Int. 11. I can't remember.

Ans. to X Int. 12. I believe he did, but then there were circumstances to keep her from it. The family—that is, Mr. Davis and his wife and grandchildren—went to Europe in 1859, and then the war came on, and Mr. Davis left Hurricane in 1861 and never returned there to live. I know Mrs. Laughlin visited him in Vicksburg, but do not think she ever went to Hurricane after that event.

Ans. to X Int. 13. I think in the month of May; I think
332 they sailed for Europe in June. He returned the fall of the same year, probably in November, and on his return from Europe he returned to Hurricane, and remained there until 1861 or 1862. I think he remained at Hurricane until the spring of 1862.

Ans. to X Int. 14. Not to my knowledge.

Ans. to X Int. 15. In Madison parish, La., prior to Dec., 1858; I had always lived in Madison parish since my marriage; before that I had lived at Hurricane.

Ans. to X Int. 16. I was born in 1831, and consequently 27 years old at that time.

Ans. to X Int. 17. No, sir; I never heard that.

Redirect examination by A. M. LEA, Esq., of counsel for defendant-:

Ans. to Int. 1. She visited there on that business.

LUCY MITCHELL.

And I do hereby certify that the foregoing deposition was
333 written down by me in the presence of said witness, and, after having been read over to her, the same was by her signed in my presence; and I do further certify that at the taking of said deposition there was present Murry F. Smith, Esq., of counsel for the complainant, and A. M. Lea, Esq., of counsel for defendant-.

Given under my hand this 27th day of April, 1882.

J. M. McKEE, *Examiner.*

Filed May the 15th, 1882.

J. M. McKEE, *Clk.*

And on the 18th day of May, A. D. 1882, the deposition of G. W. McElrath, a witness for complainant, was filed in said cause in the office of the clerk of said court, and is in the words and figures following, to wit:

334 Circuit Court of United States for the Southern District of Mississippi.

FLORIDA LAUGHLIN *vs.* JOS. D. MITCHELL *et al.*

It is agreed that annexed interrogatories and cross-interrogatories ad-ress to G. W. McElrath, a witness for complainant in above cause, may be answered & sworn to before any officer at or near Bladen Springs, Ala., authorized to administer oaths, and that such answers may be read as the deposition of said witness on the hearing of said cause, subject to objections for relevancy and competency alone, commission and all other matters of form being hereby expressly wa-ved.

Vicksburg, Miss., May 5th, 1881.

PITTMAN, PITTMAN & SMITH,
For Complainant.
A. M. LEA, *For Def't Mitchell.*

Filed May 18, 1882.

J. M. McKEE, *Cl'k.*

335 In the Circuit Court of the United States for the Southern District of Mississippi.

FLORIDA LAUGHLIN *vs.* JOS. D. MITCHELL *et al.*

Interrogatories and cross-interrogatories addressed to Geo. McElrath, a witness for complainant, residing at Bladen Springs, Ala.

Inter'y 1. What is your name, age, residence, and occupation?

Interrog. 2. Where did you reside in June, 1846, and from that time up to 1850, inclusive?

Interrog. 3. Were you acquainted with the late Joseph E. Davis, of Hurricane, Warren Co., Miss., and are you acquainted with Mrs. Florida Laughlin, of Diamond Place, Warren Co., Miss.; and, if so, how long have you known her?

Interr-g. 4. Are you acquainted with the property known as Diamond Place, in Warren Co., Miss., or not? If you are, state how long you have known this property.

336 Interrog. 5. State whether or not you know anything of a sale of this property about the year 1846 under certain deeds of trust given by David McCaleb and its purchase by said Joseph E. Davis. If yea, state whether your kno-ledge of this sale is personal; and, if not personal, state its character and in what — obtained by you.

Interrog. 6. State, if you can, who lived at Diamond Place up to the time of your moving to Alabama and who was then its reputed owner.

Interrog. 7. Were or — you not familiar with the value of land & slaves in the county of Warren in the year 1846? If yea, state whether the sum of $28,000.00 was a fair price for Diamond Place and fifty-five slave-, said slaves being composed partly of women and children and partly of men, some of whom were fifty years old and upwards, fifteen thousand of the purchase-money being paid as

follows: The sale took place in June, 1846; one-third of the money was payable in January, 1847, and all interest, one-third and all interest in January, 1848, the balance in Jan'y, 1849.

337 Interr-g. 8. State, if you can, what was the common repute in the neighborhood as to the purchase of said property and of the subsequent possession of Mrs. Laughlin. Who was reputed to be the real beneficial owner of the property after said purchase as distinguished from the holder of the legal title thereof?

X Int. 1. Was it not well known to every one cognizant of the true state of [the] title that Mr. Jos. E. Davis was the real owner of the Diamond Place and that Mrs. Laughlin, his daughter, had only the usufruct during her life?

X Int. 2. By whom have you heard the question of the ownership of Diamond Place discussed and when and where?

X Int. 3. How many acres [of] open land were there on the place in 1846?

X Int. 4. Is it not true that in the year 1846 real estate, slaves, and all values [were] greatly depressed in that section of the country?

338 THE STATE OF ALA., *Chartan County:*

Deposition of G. W. McElrath, a witness swo-n on the 11th day of May, 1882, at Bladen Springs, in said State and county, by virtue of an agreement between attorneys for pl'ffs and def'ts in a cause pending between Florid- Laughlin, pl'ff, and Joseph Mitchell *et al.*, defendants.

The said G. W. MCELRATH, being first duly sworn to speak the truth, the whole truth, and nothing but the truth, doth depose and say as follows:

To 1st direct Int. he saith: Geo. W. McElrath; age, over 70 years; Bladen Springs, Ala.; physician.

To 2nd direct Int.: Warrenton, Warren Co., Miss.

To 3rd direct Int.: I was acquainted with Jos. E. Davis and *and* Mrs. Florida Laughlin; I knew Mrs. Laughlin when she was Mrs. McCaleb.

To 4th direct Int.: I do; I knew the place several years during the lifetime of Mr. McCaleb.

To 5th direct Int.: I only know from public rumor. I was not at the sale.

339 To 6th direct Int.: Mrs. Florid- Laughlin.

To 7th direct Int.: I was familiar with the prices of land and slaves in Warren Co., Miss., in 1846. I do not consider that the property sold for one-half its value. It was rumored that Mr. Davis was purchasing the property for Mrs. Laughlin, and owing to that rumor the property did not bring its value.

To 8th direct Int.: It was understood the purchase was made for Mrs. Laughlin, and she resided on the place and was considered the owner.

To 1st X Int.: Rumor said not—that he was the purchaser for her.

To 2nd X Int.: I have heard it repeatedly, but cannot remember when or by whom.
To 3rd X Int.: I cannot tell.
To 4th X Int.: I do not recollect.

G. W. McELRATH.

Sworn to before me this 11th day of May, 1882.

R. M. HEANN,
M'r & ex-off. J. P.

340 And afterwards, to wit, on the 3rd day of June, A. D. 1882, the same being a day of a regular term of said court, the following order was made and entered of record upon the minutes of said court, to wit:

FLORIDA LAUGHLIN *vs.* J. D. MITCHELL *et al.*

By consent of parties this cause is set down for final hearing on the first day of next term, with leave to both parties to take additional testimony until Oct. 1, 1882.
Ordered this 3rd day of June, A. D. 1882.

R. A. HILL, *Judge.*

And on the 3rd day of June, A. D. 1882, the following motion in said cause was filed in the office of the clerk of said court, to wit:

341 FLORIDA LAUGHLIN *vs.* J. D. MITCHELL *et al.* } Equity.

The defendant, J. D. Mitchell, by his solicitor, moves the court that complainant be required to furnish security for costs within a reasonable time, to be fixed by the court, & in default thereof that the bill be dismissed.

A. M. LEA,
Solicitor for s'd Def't.

And on the 3rd day of June, A. D. 1882, the same being a day of a regular term of the said court, an order was made in said cause and entered of record upon the minutes of said court in the words & figures following, to wit:

342 FLORIDA LAUGHLIN *vs.* J. D. MITCHELL *et al.* } Equity.

This cause coming on to be heard on the motion of def't Mitchell that complainant be required to furnish security for costs, & the court being thereof advised, it is ordered & adjudged that the complainant file with the clerk a bond in the sum of two hundred & fifty dollars with sufficient surety, to be approved by him, conditioned for the payment of the costs of this cause if the same shall be adjudged against her within sixty days from the date of this decree, & in default thereof let the bill of complaint be dismissed.

Ordered, adjudged, & decreed this 3rd day of June, A. D. 1882.
R. A. HILL, *Judge.*

And afterwards, to wit, on 25th July, 1882, the complainant filed in the office of the clerk of said court her bond for costs in
343 the words and figures following, to wit:

FLORIDA LAUGHLIN
vs.
JOS. D. MITCHELL *et al.* } In Equity.

Know all men by these presents that we, Florida Laughlin, as principal; W. B. Pittman, A. B. Pittman, and Murray F. Smith, as sureties, all of Warren county, Mississippi, are firmly held and bound unto James M. McKee, clerk of the United States district court of the southern district of Mississippi, and his successors in office, in the sum of $250.00, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs, executors, and administrators.

The condition of this obligation is such that whereas the said Florida Laughlin as complainant in a suit on the equity docket of said court, in which Jos. D. Mitchell [*et al.*] are defendants, has been ruled to costs:

Now if she, the said Florida Laughlin, shall well and truly pay all such costs as may be awarded against her in said suit by said court, then this obligation to be void; otherwise to remain in full force and virtue.

Witness our hands and seals this 24th day of July, 1882.
FLORIDA LAUGHLIN,
By M. F. SMITH, *Att'y.*
MURRAY F. SMITH.
W. B. PITTMAN.
A. B. PITTMAN.

Approved.
J. M. McKEE, *Clerk.*

344 Afterwards, to wit, on the 11th day of September, 1882, the following notice and acceptance of same was filed in the office of the clerk of said court:

U. S. Cir. C't for So. Dist. Miss. In Equity.

FLORIDA LAUGHLIN *vs.* J. D. MITCHELL *et al.*

To Mrs. Florida Laughlin or Messrs. Pittman, Pittman & Smith & Smith, her solicitors:

Please take notice that on the hearing of the above-entitled cause the defendant Mitchell will offer as evidence a duly certified transcript of the record, pleading, & proceedings in the suit of Payne & Green *et als. vs.* Davis *et als.*, filed and had in the superior court of chancery of the State of Mississippi, and numbered 4056 on the docket of said court, as the same remains of record in the office of the clerk of the supreme court of said State.

A. M. LEA,
Solicitor for J. D. Mitchell.

Service accepted this 18th Sept., 1882.
PITTMAN, PITTMAN & SMITH,
Sol's for Compl't.

345 And afterwards, to wit, on the 6th day of November, A. D. 1882, the deposition of J. H. D. Bowmar, a witness for the defendant, was filed in the office of the clerk of said court in the words & figures following, to wit:

346 Interrogatories and cross-interrogatories to be propounded to Dr. J. H. D. Bowmar, a witness on behalf of the defendant, J. D. Mitchell, in the cause now pending in the circuit court of the United States for so. dist. of Mississippi, wherein Florida Laughlin is complainant and the said Mitchell and others are defendants.

Int. 1. State your name, age, residence, & occupation.
Ans. My name is J. H. D. Bowmar; Vicksburg; real est. agent.
Int. 2. Are you one of the executors of the will of Joseph E. Davis, deceased?
Ans. Yes.
Int. 3. When did Joseph E. Davis die?
Ans. On the 19th September, 1870.
Int. 4. State, if you know, what were the relations existing between Jos. E. Davis and his granddaughter, Mrs. M. E. Hamer.
Ans. They were of the most confidential character.

347 Int. 5. If you had any conversation with Mr. Davis shortly before his death, referring to his business affairs, in which Mrs. Hamer was mentioned, please state the circumstances under which said conversation was had and give the conversation as fully as you can recollect the same.
Ans. Mr. Davis, when he told me on his death-bed that he had appointed me one of his executors, said that Mrs. Hamer, then Miss M. E. Mitchell, knew more of his business than any one else, and referred her to me as being able to inform me about it if I required any information.

J. H. D. BOWMAR.

The complainant objects to the 3d & 4th interrogatories and the answers to the same as irrelevant and incompetent, because they seek to bind the complainant by conversations and communications had with and made by Jos. E. Davis after the execution of the instrument sought to be set aside *had been executed*, and when the complainant was not present and had no knowledge of such conversations or communications.

PITTMAN, PITTMAN & SMITH.

348 *Cross-Interrogatories to J. H. D. Bowman.*

Cross-int 1. How old is Mrs. M. E. Hamer?
Ans. I do not know, but would suppose about forty years.
X Int. 2. How old was she in 1858?
Ans. I do not know, but suppose about 17 or 18 years.

X Int. 3. Did not these confidential relations spoken of by you in your answers to the 3d & 4th interrogatories commence long after 1858 or '9 and some time about 1866 or 1867?

Ans. I do not know exactly, but think it existed from her maturity. She was always with her grandfather after she was grown.

J. H. D. BOWMAR.

And on the 6th day of November, A. D. 1882, the depositions of S. S. Booth and Robert Wood, witnesses for defendant in said cause, were filed in the office of the clerk of said court in the words and figures following, to wit:

349 U. S. OF AMERICA,
Southern Dist. — State of Mississippi, County of Warren:

In Circuit Court for Southe-n Dist. and State.

FLORIDA LAUGHLIN, Pl'ff, *vs.* J. D. MITCHELL *et al.*, Def'ts.

Depositions on part of defendants taken before me, Laz. Lindsey, a commissioner of said court, in Vicksburg, Miss., to be read as evidence in said case and by consent of attorneys.

Present: A. M. Lea, Esq., attorney for defendants; Messrs. Pitmans & Smith, for plaintiffs.

Deposition of S. S. Booth.

S. S. BOOTH, Esq., being produced, and by me first duly sworn, deposes and says:

By DEFENDANTS' COUNSEL:

Question first. State your name, age, and residence.

Answer. My name is S. S. Booth; I am 13 years of age, and reside in Warren county, Miss.

Question 2. Where were you residing in the year 1846, and what was your occupation at that time?

350 Answer. I was residing on my place, about 8 miles from Vicksburg, in Warren county, Miss., and was a planter.

Quest. 3. How did lands and negroes sell in this section at that time? State all you know or can recollect as to the value of that kind of property during that year.

Answer. I owned at that time one of the best hill places in the county, and at that time I offered my place at eight dollars per acre. I became very much discouraged and offered my place for sale. This was in 1845, 1846, or 1847, and did not sell. Cotton, I know, sold in 1844 at 4½ cents, and gradually increased until 1850. There was no sale for real estate in those years. The time I speak of covers the year 1846. I think this is true of all landed property in this county. In 1846, I recollect, Dr. James M. Barnett was selling some negroes in front of the Washington hotel, as trustee or other capacity, and asked me if I did not want to purchase some negroes. I stopped and purchased three at that sale. The first one I bought was

351 a very valuable negro fellow—I never saw a more valuable one—for whom I paid six hundred dollars; the next a woman

about 40 years old, a very fine cook. My impression is, but not certain, that it was one hundred and seventy-five or two hundred and seventy-five dollars I paid for her. The next was a boy, a very fine boy, 17 years old, for which I paid four hundred dollars. I recollect the same year of buying at the court-house a girl, grown, about 17 or 18 years old, for which I paid four hundred and fifty dollars. This was after the purchase at the Washington hotel. I could not tell the value of negro property general-y in 1846, except those sold under the hammer for debt. There was no sale for such property. My impression is that slave property previous to 1846 was lower and subsequent to that year such property advanced gradually. It had commenced to advance in 1846.

S. S. BOOTH.

Sworn to and subscribed before me May 8, 1882.

LAZ. LINDSEY, *U. S. Com.*

[Endorsed:] U. S. cir. co-rt.

By consent of counsel for the parties, further taking of depositions herein is adjourned until Thursday, July 13, 1882.

LAZ. LINDSEY, *U. S. Com'r.*

352 *Deposition of Robert Wood.*

THURSDAY, *July* 13, 1882.

ROBERT WOOD, SR., a witness for defendants, being produced and by me first duly sworn, deposes and says:

By DEFENDANTS' COUNSEL:

Question 1st. State your name, age, residence, and occupation.

Answer. My name is Robert Wood, Sr.; I am 60 years old; I reside on the old Henry Durden place, about 6 miles from Vicksburg; am a gard-ner.

Question 2nd. Were you present at the sale of the Diamond plantation to Mr. Joseph E. Davis in the month of June, 1846?

Answer. I was right there at the time of that sale.

Question 3rd. State where said sale took place; how many were present. Give the names of any white persons you remember to have been present.

Answer. The sale took place up to the overseer's house, on the gallery. There were seven white men present, and about thirty-
353 five or more colored. There were present: Jo. Davis, Jonathan M. Caleb, Mr. Searles, Lawyer Chilton, John Green, Col. Douglas, and Mr. McDowell, the overseer. Mr. Green was there, expecting to receive some of the money from the sale.

Question 4th. State all you can recollect to have occurred at said sale, and what, if any, statements or declarations were made by Mr. Jos. E. Davis at that time.

Answer. The only thing I took notice of was, immediately after the sale was made Jo. Davis got up and stated he wanted it well understood that this property has been purchased by me twice, and is never to go out of the Davis family; this was in presence of Jona-

than McCaleb, who was right by the side of Mr. Davis; and immediately the overseer, Mr. McDowell, rose up and asked Mr. Davis what he was to do, and Mr. Davis told him he was to remain there. Mr. McDowell did remain on the place that whole year and a half, and quit. Mr. Davis then employed Mr. Folkes. No one else made a bid but John Green, whom Mr. Davis told to hold on, as he
354 was living yet. Mr. McCaleb did nothing or said nothing at the sale and made no bid.

Question 5th. After the sale, who was recognised by the negroes on the plantation as the real owner of the place?

Answer. Mr. Davis was recognised as the owner.

Question 6th. How often did you see Mr. Joseph E. Davis after the sale?

Answer. Hardly missed a week in seeing him.

Question 7th. Were the Diamond Place negroes in the habit of going to the Hurricane Place; and, if so, for what purpose?

Answer. Whenever they got in a fuss with the overseer they would run off and go down there, and I would go and bring them back; I would be sent after them.

Cross-examination:

First X Question. Do you know the colored woman now living on Diamond Place, and who has been a cook in the family
355 of Mrs. Laughlin for several years?

Answer. Yes; I know her; her name is Louisa Neil; she was not at the sale, but on the place.

2nd X Question. Do you know whether or not Mr. Jonathan McCaleb has any conversation with Mr. Davis prior to the sale?

Answer. If they talked it was not there; they walked in together and sat near each other and talked away in a whisper.

Third X Question. You say they came in together. Where did they come from?

Answer. They came up from the house together.

Fourth X Question. Was it not the understanding of those who were present that Mr. Davis bought the property for his daughter, then Mrs. McCaleb, now Mrs. Laughlin?

Answer. It was the understanding with all that were
356 around that he bought it for himself.

Fifth X Question. Have you not within the last week had a conversation with a young man—white gentleman—while sitting on the steps in the building in which Mr. A. M. Lea has his office waiting for him to come to his office, in which you said that it was well understood that Mr. Davis did buy this property for his daughter, and that every one at the sale knew it?

Answer. No; I told him he bought it for himself; that is what I thought I stated to him.

6th X Question. Did you know a gentleman named Dr. McElrath; if so, where did he live at the time of the sale, for some time after, and where does he now live?

Answer. I knew Dr. McElrath well for years He lived in the town

of Warrenton, six miles from the Diamond Place. He now lives in Bolivar county, Miss., or in Georgia; I do not know which.

357 Seventh X Question. State whether or not Dr. McElrath was a friend of the family and in the habit of visiting the family of Mr. Jo. Davis and of Mrs. McCaleb, now Mrs. Laughlin.

Answer. He was a great friend to both and visited them all the time. He thought more of Mrs. Laughlin than of any of them.

Eighth X Question. When did Dr. McElrath leave the neighborhood of Warrenton?

Answer. He left directly the war took place; the year I do not know.

Ninth X Question. Did you know the young gentleman referred to in X int. 5th? Would you recognise him if you were to see him now?

Answer. No, sir; I did not know him, but would recognise him if I saw him now.

10th X Question. When did you last see Mr. Jo. Mitchell?

358 Answer. Not for a month. It is quite a month since I saw him.

11th X Question. Where did you see him, then, and what did he say to you about this matter you are now testifying about?

Answer. Right at Reynold's drug store, on the street. He asked me if I would go up and state what I knew if called on, and I told him I would.

12th X Question. How did he know what you knew about it?

Answer. I was always talking with him from childhood up, and always told him his grandpa bought that place for him and Mis-Lea's *either*.

13th X Question. This is Mr. Charles Winkley. Do you recognize him as the young man you were talking with, refer-ed to in X int. 5?

Answer. I do recognize him as the same person.

359 Redirect examination:

Question 1st. State the conversations as near as you can between yourself and Mr. Winkley. How did you come to have an interview with him, and what was said by you & him?

Answer. When I came in the room where Mr. Winkley was I told him I was waiting for Mr. Lea, and asked him if he knew what time he would come in. I asked Mr. Winkley if there was any way I could leave a card for Mr. Lea, but said that I had rather see him, and I told Mr. Winkley my business was—I think I told him I came to see about the place that belonged to Jo. Mitchell. This is all I can recollect. I tell Mr. Winkley, now present, to go on and state what I said to him.

Question 2nd. Did Mr. Winkley question you about the case?

Answer. He did very little, only what I said to him myself.

360 Question 3rd. What did you say to him?

Answer. All I know I did tell him was that I did not want to go again- my old mistress, but that place ought not to be taken from Jo. Mitchell.

Question 4th. Can you recall anything else you said?

Answer. I can't think of anything else I said to him in that conversation.

his
ROBERT x WOOD, SR.
mark.

Sworn to and subscribed before me July 13, 1882.

——— ———.

Com'r fee, $5.00; due.

[Endorsed:] U. S. cir. court. Filed Nov. 6, 1882. J. M. McKee, cl'k.

And on the 6th day of Nov., 1882, the deposition of C. P. Winkley, a witness for the complainant in said cause, was filed in the office of the clerk of said court in the words and figures following, to wit.

361 UNITED STATES OF AMERICA,
State of Mississippi, County of Warren:

In Circuit Court for said Dist. and State.

FLORIDA LAUGHLIN, Plaintiff, *vs.* J. D. MITCHELL *et al.*, Def'ts.

Deposition on part of plaintiff, taken before me, Laz. Lindsay, a commissioner of said court, in Vicksburg, Mississippi, on the 15th day of August, 1882, by consent of attorneys for both parties, to be read as evidence in said case.

Present: Messrs. Pittmans & Smith, att'ys for plaintiff; A. M. Lea, att'y for defendants.

CHARLES P. WINKLEY, being produced and by me first duly sworn, deposes and says:

By PL'FF'S ATT'YS:

Question first. What is your name, age, and occupation?

Answer. My name is Chas. P. Winkley; I am in my twenty-first year, and a law student in the office of Messrs. Pittman, Pittman & Smith.

Question 2nd. Do you remember the circumstances of appearing at my request before Laz. Lindsay while Robert Wood was under examination as a witness in this case for the purpose of being
362 identified by him in answer to X int. 10; if so, are you the Charles Winkley therein referred to?

Answer. Yes; I remember the circumstances; I am the same person.

Question third. Did you or not have any conversation [with] witness Wood at the time and place mentioned by him on the occasion of his meeting you? If yea, state the substance of the conversation as fully as you can; also the occasion of it.

Answer. I did have a conversation with Wood at the time and place asked. The substance is as follows: He came into our office and asked me if he could leave a card for Mr. Lea. He said he

wanted to see Mr. Lea about this case Mrs. Laughlin has against Jo. Mitchell; that Mr. Lea had sent Mr. Little for him, and that was what he wanted to see Mr. Lea about. He went on to say that he was on the Diamond Place when that place was sold, and when Mr. Jos. E. Davis became the purchaser. He said, furthermore, that at the time of the sale Mr. Jonathan McCaleb was there and made some bids, but that Mr. Davis final-y became the purchaser, and that they were all glad of it as it kept them al- together, and
363 [there] was no separation of the negroes on the place, and that the property did not go out of the family, and that Mrs. Laughlin still had her place, as it was understood that Mr. Davis purchased the place for her. This was about the substance of the conversation.

Question fourth. Read the fifth, ninth, and 13th X interrogatories, and the answers thereto, and the first, second, third, and fourth redirect int'ys, and answers thereto, in the deposition of said Wood, and state in what particulars, if any, do the statement- of the witness Wood, as set forth in his said deposition, vary or conflict with the statements actual-y made by him to you?

Answer. I have read the int'ys and answers referred to, and find all that part which relates to the meeting, and the circumstances under which the conversation took place, are the same as I myself remember, but as to his statements made in his deposition, as regards the matter with which he conversed with me, I find the same
364 in direct conflict to that conversation. I find it differs as regards his answer to 5th X int'y in this particular, that in his answer he says *he says* he thinks he stated to me that Mr. Davis bought it for himself, of which statement I have no recollection. On the contrary, he stated that Mr. Davis bought it for Mrs. Laughlin. In his answer to the 9th X int'y he states that he did not know me, but recognized me as shown in his deposition, when I was called in to see if he could identify me; in all of which I fully concur. In his answer to the 13th X int'y he says: I do recognize him as the same person, and on which occasion I myself was also certain that he was the same person with whom I had such conversation. In his answer to first redirect int'y his statement is almost as I recollect it. In his answer to second redirect int'y he says: I questioned him about the case very little. I asked him a few questions, as a matter of course, in order to catch the thread of his conversation. In his answer to the third redirect int'y I say he did not make any such statement to me as that stated in said
365 3rd int'y. In his answer to 4th redirect int'y he says: I cannot think of anything else I said to him in that conversation. As to this, I can only say that the substance of his conversation on that occasion was as I have previously stated.

Question fifth. Are you certain he told you that it was understood by all hands that Mr. Jos. E. Davis bought the place for Mrs. Laughlin? May you not be mistaken? Did you shortly afterwards repeat this conversation to any one; and, if yea, to whom?

Answer. I am certain that he told me that Mr. Davis bought the place for Mrs. Laughlin. I am not mistaken—am certain of it. In

a few minutes after he, Wood, left, I told Mr. Murry F. Smith about the controversy I had just had with Wood. (Form of fourth int'y objected to by att'y for defendants. No cross-questions propounded.)

C. P. WINKSLEY.

Sworn to and subscribed before me Aug't 15, 1882.

LAZ. LINDSEY,
U. S. Com'r.

[Endorsed:] U. S. cir. c't. Filed Nov. 6, 1882. J. M. McKee, cl'k.

366 And afterwards, to wit, on the 7th day of November, A. D. 1882, a motion in said cause was filed and entered in the office of the clerk of said court by defendants, in the words & figures following, to wit:

FLORIDA LAUGHLIN *vs.* J. D. MITCHELL *et al.*

The defendant Mitchell, by his solicitor, moves the court to exclude from the testimony in this case the deposition of the complainant, Florida Laughlin, heretofore taken, because—

1st. The said Florida Laughlin is not a competent witness under section 858, Revised Statutes of the U. S.

2. The said Florida is not a competent witness under section 1602 of the code of Miss. of 1880.

A. M. LEA,
Sol. for s'd D'f't.

And on the 7th day of November, A. D. 1882, an agreement of counsel in said cause was filed in the office of the clerk of
367 said court in the words & figures following, to wit:

Agreement of Counsel.

In the Circuit Court of the United States for the Southern District of Mississppi. In Equity.

FLORIDA LAUGHLIN, Compl't; *v.* JOS. D. MITCHELL *et al.*, D'f'ts. } 314.

It is agreed in this cause as follows:

1st. The amendment to the plaintiff's bill this day filed shall be considered and treated as sworn to.

2d. Said amendment shall be considered and treated as traversed by the answer of the defendant on information and belief, and said answer shall be considered as sworn to by the defendant.

3rd. It is agreed that if Florida Laughlin & E. C. Laughlin were examined as witnesses in support of said amendment they would each of them severally testify that the answer signed by her in the cause referred to in said amendment was sent to her by her father, or that a draft of said answer was sent to her by her father under cover of a letter from him, advising her that he inclosed
368 "a draft of an answer for you (her) in the Guion suit," and requesting her to sign and make oath to the same and return

it, which she copied or had copied, signed, made oath to, and returned without having ever seen any of the pleadings in said cause, and especially without having seen or been advised of the contents of the answer of Jos. E. Davis.

4th. That Murray F. Smith, Esq., if examined as a witness in support of said amendment would testify that, as one of the solicitors of Mrs. Laughlin, he had in his possession the letter inclosing the draft of said answer, which letter was in the handwriting of and signed by Jos. E. Davis, and contained the expression "I enclose you a draft of the answer in the Guion suit, which I want you to have copied and sign and make oath to and return," or words to that effect; that he particularly and clearly remembers the words, "I inclose you a draft of answer in Guion suit."

It is further agreed that these admissions shall be taken as and deemed to be the testimony of such of said persons as if regularly taken on depositions subject to exceptions for relevancy & for competency of witnesses.

5th. It is admitted that her said answer referred to is in her own handwriting, as it now appears of record.

369 6th. It is agreed that the deposition of Dr. J. H. D. Bowman, heretofore taken in this cause in behalf of the defendant, but not yet received, shall be considered as offered in evidence, and when received shall be filed as evidence in the cause.

ALF. B. PITTMAN,
Sol. for Compl't.
A. M. LEA,
Sol. for J. D. Mitchell.

And on the 7th day of Nov'r, 1882, an amendment to the original bill in said cause was filed in the office of the clerk of said court, and is in the words & figures following, to wit:

370 In the Circuit Court of the United States for the Southern District of Mississippi. In Equity.

FLORIDA LAUGHLIN, Complainant,
vs.
JOS. D. MITCHELL *et al.*, Defendants. } No. 314.

To the honorable the judges of the circuit court of the United States for the southern district of Mississippi:

Your oratrix, Florida Laughlin, who is the complainant in the original bill filed in this cause, respectfully sheweth further unto your honors, by way of amendment to the said original bill, that on June 23, 1847, Andrew M. Payne and John J. Green, copartners under the firm name and style of Payne and Green; John J. Green and Benjamin Crump, copartners under the firm name and style of J. J. Green & Co.; E. P. McDowell, Davis M. Fisher, W. L. Cameron, J. G. Ford, Charles E. Sherman, Morris Emanual, William St. John Elliott, assignee of Robert S. Throckmorton; and Robert

Patterson, Eleanor J. Guion and Laura S. Guion, infants,
371 who sued by their father, John I. Guion, and the said John I. Guion filed in the superior court, in chancery, through their solicitors, Fulton Anderson and Guion & Downs, a bill against Joseph E. Davis, your orator's father, John M. Chilton, and Charles J. Searles, and Florida McCaleb, your oratrix; and Charles A. Jacobs, William Laughlin, and Edward E. Laughlin, for the purpose of subjecting to the payment of their several claims against David McCaleb the surplus of $13,494.06, remaining after the payment of the Jacobs' debt and costs of sale, as the same is set forth in your oratrix's original bill and as is shown by said agreement filed as Exhibit "D" to said bill, said several complainants having a third mortgage on all the property, or rather a second mortgage on all which had been conveyed to G. W. McElrath, it being second on part and third on part. Said Guion was trustee in the conveyance for their benefit. It was contended by the complainants in said bill that inasmuch as Laughlin, Searles & Co. had a separate security for their claim, viz., the personal property on the Diamond Place and certain slaves, which your oratrix
372 claimed, that this debt should not be paid out of the surplus above mentioned, as it was provided it should be by the terms of the agreement aforesaid, but that they should be required to look to their mortgage and the entire surplus aforesaid left for the unsecured creditors—complainants in said bill. It was contended in the interest of your oratrix that the slaves above referred to were not liable for the debt, or, if so, that your oratrix would be entitled to be treated as a surety for David McCaleb, and by subrogation be reimbursed out of said surplus. By the final decree in said cause the entire surplus was decreed to the complainants therein, the court ascertaining by its decree that said slaves were liable as the property of said McCaleb under said mortgage. Your oratrix further avers that she has never at any time seen said bill or any of the papers, evidence, or pleadings pertaining thereto, except her own answer filed therein, and never understood, so far as she now recollects, the *slope* of the bill, save in a general way that her right to the slaves in question was involved, and that she now sets forth the same in brief, so far as she has attempted to
373 do herein on information and belief, from an examination thereof made by her solicitor, Mr. A. B. Pittman.

Your oratrix further avers that the answer filed for her in said cause was sent to her for her signature by her said father, and that she signed the same without having seen or having been advised of the contents of the answer of said Jos. E. Davis, having confidence that his defence of said suit would be properly made and justly made in accordance with her interests.

Your oratrix is advised that the pleadings in said suit are voluminous; that many things are asserted as facts ther-in which may or may not be true as stated; and she is particularly advised that it is stated in the answer of said Jos. E. Davis that certain persons therein mentioned had bid for each and every article of property offered at said sale, and that his said answer has other statements which might

bear the construction of implying that said property at said sale sold for its full value on account of spirited competition, though
374 said averments seemed to have been so framed as to imply or tend to imply that without stating it.

Your oratrix is advised that no attack had been made in said suit on said sale, but that the validity of the same was affirmed in said bill, and said allegations seem to have been wholly unnecessary and irrelevant.

Be that as it may, your oratrix avers, as she has already done, that she has never seen said answer nor been advised of its contents until she read this answer for the purpose of subscribing and making oath to the same, and she avers, on information and belief, as she did in her original bill, that it was made known to the persons present at said sale, that Jos. E. Davis was purchasing for your oratrix, and that it probably affected the bid-ing, as it was intended it should do.

And your oratrix prays for the relief prayed for in her original bill.

PITTMAN, PITTMAN & SMITH,
Solicitors for Compl't.

375 STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me, Florida Laughlin, complainant in the suit of Florida Laughling *vs.* J. D. Mitchell *et al.* above entitled, who, being by me duly sworn, says on oath that the allegations set forth in the foregoing amendment to her said bill are true, so far as they are within her own knowledge, and that she believes the same to be true so far as they are averred on information and belief.

——— ———.

Endorsed: Filed Nov. 7, 1882. J. M. McKee, cl'k.

And on the 7th day of November, A. D. 1882, a transcript of proceedings had in the superior court of chancery of the State of Mississippi was filed by defendant as proof in said cause in the words and figures following, to wit:

376 STATE OF MISSISSIPPI:

Superior Court of Chancery. December Term, A. D. 1847.

The *the* Honorable Stephen Cocke, chancellor of the State of Mississippi, in chancery sitting:

Humbly complaining, show unto your honor your orators, Andrew M. Payne & John J. Green, citizens of the county of Warren and State of Mississippi, merchants, trading under the firm and style of Payne & Green; John J. Green and Benjamin Crump, citizens of said county, merchants, trading under the firm & style of J. J. Green & Co.; E. P. McDowell, a citizen of said county; Davis M. Fisher, a citizen of said county; W. L. Cambron, a citizen of the State of Kentucky; J. G. Ford, a citizen of the State of Tennessee; Charles E. Sherman, a citizen of the District of Columbia; Morris Emanuel, a citizen of the city of Vicksburg & State of Mississippi;

William St. John Elliott, assignee of Robert S. Throckmorton
377 and Robert Patterson, late merchants and partners in trade in the city of Natchez & said State of Mississippi; Eleanor J. Guion and Laura S. Guion, infants under the age of twenty-one years, who sue by their next friend, their father, John I. Guion, of the city of Jackson & State of Mississippi, and the said John I. Guion, that on the seventh day of June, A. D. 1844, David McCaleb, Jr., at that time a citizen of the county of Warren & State of Mississippi, but since dead, being indebted to one Charles A. Jacobs, of the city of New Orleans & State of Louisiana, in the sum of thirteen thousand nine hundred and fifty-five dollars and eighty cents, executed jointly with his wife, Florida A. McCaleb, a deed of trust to John M. Chilton & Charles J. Searles, both of the city of Vicksburg & State of Mississippi, by which he conveyed to said Chilton & Searles, as trustees, the real and personal estate mentioned and described in
378 said deed for the purpose of securing to said Jacobs the payment of the said sum of money acknowledged in said deed to be due from said McCaleb to said Jacobs & the accruing interest thereon.

You- orators file a copy of said deed of trust herewith, marked Exhibit No. 1, and pray that the same may be taken & considered as a part of this their bill of complaint.

Your orators further represent that on the seventh day of May, (1846) eighteen hundred & forty-six, the said David McCaleb, Jr., and his wife, Florida, executed a deed of trust to George W. McElrath, a citizen of the county of Warren & State of Mississippi, which is filed herewith, marked Exhibit B, & which complainants pray may be taken as part of this bill of complaint; that by said deed of trust said David McCaleb & his wife, Florida, conveyed to said McElrath, as trustee, all of the real and personal estate embraced in the deed to Chilton & Searles, and also in addition thereto
379 the following slaves, to wit: Ben, aged 23 years; Charles, aged 35 years; Stephen, aged 30 years; Carl, aged 25 years; Judy, aged 23 years; Laura, aged 23 years; Alick, aged 15 years; Bob, aged 20 years, & Sophy, aged 40 years, for the purpose of securing to William Laughlin & Charles J. Searles, of the city of Vicksburg, & Edmund C. Laughlin, of the city of New Orleans, merchants in trade under the firm & style of Laughlin, Searles & Co., the payment of said McCaleb's note to them for the sum of one thousand dollars, dated May 1st, 1846, & payable on the 15 day of November next thereafter, and also to save harmless the said Laughlin, Searles & Co. from any loss or damage they might sustain by reason of their endorsement of a certain draft drawn by said David McCaleb, Jr., on William Laughlin & Co. & accepted by them, bearing date March 23rd, 1846, payable some months after its date, for the sum of three thousand two hundred & one dollars & sixty-one cents, all which will appear by reference to said deed, a copy
380 of which is filed as hereinbefore stated.

Your orators further represent that on the 25th day of May, 1846, the said David McCaleb, Jr., being indebted to your orators, J. J. Green & Co., in the sum of $828.43, for which they hold his

note, payable on the 20th January, 1846, and the further sum of $1,158.11 by open account, due January 1st, 1846, to your orators, Payne & Green, in the sum of $5,496.84, for which they hold his note payable March 21st, 1841; to your orator, E. P. McDowell, for services rendered as overseer in the year 1845, $1,060; & $1,000 for like services for the year 1846; to your orator, Davis M. Fisher, in the sum of $800,00; to your orator, Jonathan McCaleb, in the sum of $54,524.34, on the 11th day of April, 1846; to your orator, J. L. Cambron, $180,00, due Jan'y 1st, 1846; to your orator, J. G. Ford, $170.00, due January 1st, 1846; to your orator, William St. John Elliott, assignee of Throckmorton & Patterson, $300.00;
381 to your orator, Charles E. Sherman, $2,500.00; to your orator, M. Emanuel, $400,00, made and executed to John I. Guion, one of your orators, a deed of trust to secure the debts therein enumerated & set forth as above stated.

All of the real & personal estate previously conveyed by & embraced in the deed to Chilton & Searles to secure the payment of the debt to Jacobs, for a more particular description of which reference is made to said deeds, & your orators file herewith, marked Exhibit No. 3, the deed from McCaleb to John I. Guion, and pray that it may be taken as part of this bill of complaint.

Your orators further represent that some of the slaves embraced in the deed to McElrath & not included in the deed to Chilton & Searles are conveyed in the deed to Guion, & that the number of slaves conveyed by said deed is fifty-nine; the number conveyed to McElrath is forty-eight, & the number conveyed to Chilton &
382 Searles is forty-two. Your orators believe the fact to be that, in addition to the slaves conveyed to McElrath not previously conveyed, said McCaleb included in the deed to Guion, which was last executed, all the young slaves by name which were the increase from those previously conveyed.

Your orators further represent that on the 15th day of June, 1846, the said John M. Chilton & Charles J. Searles, by virtue of the powers vested in them as trustees by the deed to them from said McCaleb for the benefit of said Jacobs, did offer for sale to the highest bidder, for cash, all of the slaves & their increase embraced in the deed of trust from McCaleb to them, and also all the land conveyed by said deed; that Joseph E. Davis, a citizen of the county of Warren & State of Mississippi, became the purchaser of all of said slaves, & also of the land, he being the highest and best bidder there-
383 for, for the sum of twenty-eight thousand four hundred & thirty-four dollars & six cents, or thereabouts.

That the amount of the debt to Jacobs on said day of sale, including interest & cost of sale, &c., was $15,000.00.

That the slaves did not sell for a sufficient sum to satisfy said Jacobs' demand, & the land was then offered for sale by the trustees and was bought, as before stated, by said Joseph E. Davis.

That the horses, stock of cattle, sheep, & hogs and farming utensils embraced in said deed of trust were not offered for sale by said trustees.

That by said sale the deed of trust to said Chilton & Searles for

the benefit of said Jacobs & the debt thereby intended to be secured was fully satisfied, & a surplus fund amounting to the sum of thirteen thousand four hundred and thirty-four dollars & six cents ought to have been paid by said Joseph E. Davis in cash into the hands of said Laughlin & Chilton to be by them paid over
384 to your orator, Guion, trustee for his cocomplainants, to be distributed among them *pro rata* according to their respective claims against the said David McCaleb, Jr.

Your orators further represent that your orator, John I. Guion, was present at said sale, and immediately after it was closed gave notice to said John M. Chilton & Charles J. Searles that he had been appointed by David McCaleb, Jr., trustee for his creditors generally, who had not been previously secured in their demands against him, & that the said McCaleb had conveyed to him in trust to secure such creditors their respective claims the same property, both real & personal, which had been sold by them, and that he, as trustee for said creditors, claimed said surplus fund of $13,434.06 arising from said sale to said Davis and gave them notice not to pay the same, or any part thereof, to any one else, & subsequently, on the 3rd day of December, 1846, he gave a written notice
385 to said Chilton & Searles not to pay said surplus, or any part thereof, to any one but himself, a copy of which notice is herewith filed marked Exhibit No. 4, and prayed to be taken as part of this bill of complaint.

Your orators further represent that since the date of said sale said David McCaleb, Jr., has departed this life without any estate, and that said fund of $13,434.06 is the only means by which any portion of their respective demands against said McCaleb can be paid & discharged.

Your orators, Payne & Green, show that for their demand they recovered judgment in the circuit court of Warren county on the 30th day of May, 1846, for the sum of $7.878.80 & costs.

Your orator, Jonathan McCaleb, shows that at the May term, 1846, of Warren county circuit court, on the — of June, (1846) eighteen hundred & forty-six, he recovered on his demand against said David McCaleb judgment for the sum of $55,069.00
386 & costs, both of which judgments are wholly unsatisfied; and your orators file herewith transcripts of said judgments, marked Exhibits No. 5 & 6, which they pray may be taken as part of this bill of complaint.

Your orator, Jonathan McCaleb, also shows that after said sale, to wit, on the 17th day of June, he made to Eleanor J. & Laura S. Guion, who are complainants in this bill, an assignment of his *pro rata* dividend & interest among the other creditors of David McCaleb, Jr., in & to the said surplus of $13,434.06 arising from the sale of said D. McCaleb's property, a copy of which assignment, marked Exhibit No. 7, is herewith filed & prayed to be taken as part of this bill of complaint.

Your orators charge that the sale made by Chilton & Searles, trustees, was a cash sale; that they gave notice at the commence-

ment of said sale that it would be a cash sale & that cash
387 would be exacted of the purchasers of any of said property, and your orators hoped, and believed, that said trustees would exact payment in cash from said Joseph E. Davis for the property purchased by him, and that the surplus arising from said sale, after satisfying the deed of trust in favor of said Jacobs, would be paid over to your orator, Guion, as trustee for your other orators, to be equitably distributed among them according to their respective claims.

Your orators charge that the property purchased by said Joseph E. Davis consists of a very valuable plantation on the Mississippi river, in the county of Warren, & the slaves described in the deed of trust under which it was sold; that at the date of the sale it was planted in cotton & corn & was in a state of high cultivation; that said plantation and slaves were delivered to said Joseph E. Davis immediately after the sale by said trustees upon some agree-
388 ment or understanding between said Davis and said trustees that the title to said property should remain in them & not be vested in said Davis until he should make payment of the purchase-money, & he, the said Davis, has had possession of said property ever since & has been & still is in the enjoyment of the profits thereof without having paid, so far as your orators are concerned, one cent of the purchase-money bid therefor.

Your orators have been informed that he has made some arrangement with said Jacobs for the payment of the sum due to him.

Your orators charge that the annual value of the crops made on said plantation is at least $6,000.00.

Your orators charge that they are entitled to the said sum of $13,434.06 arising from said sale over & above the debt due to the said Jacobs, and that your orator, Guion, acting as trustee for his cocomplainants, has repeatedly applied to said trustees & said Davis for payment thereof without success, and said trustees repre-
389 senting that said sum had not been paid to them by said Davis, & said Davis avoiding the demand of payment by him by various subterfuges & pretences, among other things setting up and insisting that your orator, Guion, as trustee for his cocomplainants, is not entitled to the whole amount of said surplus to be distributed among them; that said Laughlin, Searles & Co. have an older lien upon said fund & must be first paid and satisfied; that the property embraced in the deed of trust to McElrath & not included in the deed to Chilton & Searles or in the deed to Guion is the separate & sole property of Florida A. McCaleb, wife of said David McCaleb, and not subject to his debts; that he has paid said Laughlin, Searles & Co. upwards of four thousand dollars, intended to be secured by the deed of trust in their favor hereinbefore referred to & made part of this bill, and that he is entitled to retain that amount out of said surplus fund.

Your orators charge that said Laughlin, Searles & Co. are
390 not entitled in equity to any portion of said fund arising from said sale. The deed of trust to G. W. McElrath for the

benefit of said Laughlin, Searles & Co. is to secure a positive indebtedness of said D. W. McCaleb's, Jr., to them of one thousand dollars only, and to indemnify them against loss for their endorsement of said McCaleb's draft for about $3,000 more, & by said deed nine slaves, the property of said D. McCaleb, not embraced in the deed of trust to Chilton & Searles, & all the stock of horses, cattle, hogs, sheep, & farming utensils belonging to the plantation of said McCaleb, & which have not been sold, are conveyed to said McElrath & constitute an independent & separate security of ample value to satisfy all of said Laughlin, Searles & Co.'s demands against said David McCaleb; & your orators are advised that until said Laughlin, Searles & Co. shall have resorted to their separate security for their demands against said McCaleb, & have exhausted the property constituting such security, they will not be equitably entitled to any portion of the proceeds of the sale of said McCaleb's prop-
391 erty made by said Chilton & Searles.

And your orators further charge that said deed of trust to said G. W. McElrath in favor of & for the benefit of said Laughlin, Searles & Co. has been satisfied, and, as evidence of such satisfaction, refer to Exhibit No. 4 filed with this bill, in which Charles J. Searles, one of the *cestui que trusts*, acknowledges satisfaction thereof, and to a letter from said Joseph E. Davis, herewith filed, marked Exhibit No. 8, & which your orators pray may be taken as part of this bill of complaint, in which he, the said Davis, states that he has paid the same.

Your orators have, from time to time, been induced to believe that said Joseph E. Davis would pay into the hands of said Chilton & Searles said sum of $13,434.06, to be by them disposed of according to equity & right, or that he would pay to your orator Guion, for his cocomplainants, said sum of money; but now so it is, may it please your honor, your orators are satisfied that said Joseph E.
392 Davis will not pay said sum, or any part thereof, to your orators, or either of them, until compelled by the process of your honorable court.

And your orators charge all the actings & doings of said Joseph E. Davis and the said John M. Chilton & Charles J. Searles, as trustees as aforesaid, — the said Davis in refusing to pay to said trustees in cash the sum of money bid by him for said land & slaves of the said McCaleb purchased by him of said trustees; and the said trustees, in not requiring said Davis to pay to them in cash the amount bid by him for said property, & in not paying over to your orator Guion, as trustee as aforesaid, said sum of $13,434.06, for the use & benefit of his cocomplainants, are illegal and contrary to the equitable rights of your orators, and tend to their manifest injury & oppression.

In consideration whereof, and as your orators are remediless save in a court of equity, may it please your honor to make Joseph E. Davis, John M. Chilton, & Charles J. Searles & Florida A. McCaleb, of the county of Warren & State of Mississippi, & Charles A.
393 Jacobs, William Laughlin, & Edmund C. Laughlin, of the city of New Orleans & State of Louisiana, defendants to this

bill, & to grant the proper process to compel them to appear at the next term of your honorable court to answer the allegations thereof.

And may it please your honor on the final hearing of this cause to order, adjudge, & decree that the sale of said land & slave- of the said D. McCaleb, Jr., made by said Chilton & Searles to said Joseph E. Davis shall be annulled, set aside, and declared of no effect, unless the said Joseph E. Davis or the said Chilton & Searles shall by a short day, to be appointed by your honorable court, pay into court, to be distributed among your orators, said sum of $13,434.06—

NOTE.—This part of the bill is torn off and lost. Clerk.

interest thereon from the said June, 1846, and if said sale set aside, may it please your honor to order an account to be taken under a commissioner of your honor to the rents, issues, profits of said land, & of the value of the services of said slaves while in the possession of said Jos. E. Davis, and to decree that said Davis shall pay the

394

same into this honorable court for the benefit the creditors of said David McCaleb, Jr., and that in the meantime may it please your to appoint a receiver of your court to take possession of said plantation & slaves and the other personal property conveyed in trust by said deeds from said David McCaleb to said Chilton & Searles & to said John I. Guion, and manage the same & account to your honorable court for the proceeds thereof from time to time until the final decision of your honor in the premises, or, if your orators have mistaken the relief to which they are entitled in equity, may it please your honor to grant to them such relief as to your honor may seem equitable & just, and to order, adjudge, & decree accordingly.

And, as in duty, &c.

FULTON ANDERSON.
GUION & DOWNS,
Sol'rs for Compl'ts.

Endorsed: In chancery. Dec'r term, 1847. Filed with Exhibits A, B, C, D, G, & H, and s'p'a iss'd June 23, '47. L. V. Dixon, D. C.

395

Ex. A to bill.

This indenture, made and entered into this seventh day of June, A. D. eighteen hundred & forty-four, between David McCaleb, Jur., & Florida McCaleb, his wife, of the county of Warren & State of Mississippi, of the first part; John M. Chilton & Charles J. Searles, of the said county & State, of the second part, & Charles A. Jacobs, of the city of New Orleans & State of Louisiana, of the third & last part, witnesseth:

That whereas the said McCaleb, on the 15th day of July, 1837, being largely indebted to Lambeth & Thompson, of said city of New Orleans, did execute a certain deed of trust, bearing date the day and year last aforesaid, & duly recorded in the county of Warren, in

book K, pages 125 [and] 126, to secure to said Lambeth & Thompson the sum of money therein described, which said deed of trust is hereby expressly referred to & made a part & parcel of this indenture; and whereas the said Lambeth & Thompson have, for value received by them, assigned said deed of trust & the note
396 therein described, so far as the same remain unpaid, to the said Charles A. Jacobs, who is willing to extend to said McCaleb, in consideration of the provisions of this indenture, the time of payment of said debt; and whereas the balance of payment of said debt, at the date of this indenture, due and unpaid amounts to the sum of thirteen thousand nine hundred & fifty-five $\frac{80}{100}$ dollars: Now, therefore, in order more effectually to secure said debt as well as to perpetuate & keep alive the security heretofore created by the deed of trust aforesaid, & also to extend to said McCaleb the time of payment as above mentioned, the said McCaleb has this day executed his promissory note, bearing date the 28th day of May, 1844, & payable to said Charles A. Jacobs on or before the first day of February, A. D. eighteen hundred & forty-five, at the Mechanics' & Traders' Bank, at New Orleans, with 8 per ct. interest from 1st April, 1844, for the sum of thirteen thousand nine hundred & fifty-five $\frac{80}{100}$ dollars, and the said McCaleb & wife have also bargained & sold to the said John M. Chilton & Charles
397 J. Searles, as trustees, & do hereby grant & bargain & sell, alien, & convey unto them, the said trustees, all that certain tract of land lying in the county of Warren & described in the deed of trust, bearing date July 15th, 1837, aforesaid, as follows, to wit: Lot number two in section 13 & lot number one in section 13, in township 14, range 2 east, containing together about 220 acres; also the tract of land at present possessed by said McCaleb, & adjoining the two lots of land above described, containing about 1,000 acres, being the same land heretofore purchased by David McCaleb, & by him conveyed to David McCaleb, Jr., by deeds of conveyance duly recorded in the office of the clerk of probate of Warren county, & here expressly refer-ed to for greater certainty, & moreover known & described as parts of sections 12, 13, 14, & 15, in township 14, range 2 east; also the following slaves, to wit:

Nos. 1. Joe, aged 39 years.
2. Mary Jane, aged 19 years.
3. Amelia, " 18 "
4. Austin, " 39 "
5. Sylvia, " 34 "
398 6. Priscilla, aged 16 years.
7. Ben, " 13 "
8. Betsy, " 10 "
9. Alice, " 10 "
10. Tom., " 32 "
11. John, " 28 "
12. Seymour, " 26 "
13. Jacob, " 26 "
14. Cupid, " 25 "

15. Will, aged 67 years.
16. Bailey, " 57 "
17. Amey, " 18 "
18. ——, " 42 "
19. Esther, " 17 "
20. Caroline, " 15 "
21. Field, " 19 "
22. Betsy, " 11 "
23. Rhody, " 35 "
24. Priscilla, " 15 "
25. ——, " 9 "
26. Maria, " 42 "
27. Lilly, " 22 "
28. Rose, " 21 "
29. Elish, " 17 "
30. Anthony, " 9 "
31. Vina, " 40 "
32. Caroline, " 25 "
33. Jack, " 19 "
34. Elizabeth, " 14 "

399 Nos. 35. Noel, aged 8 years.
" 36. Hannah, " 57 "
Nos. 37. Eliza, aged 25 years.
" 38. Mahala, " 25 "
" 39. Polly, " 24 "
" 40. Mary Jane, " 24 "
" 41. Judy, " 17 "
" 42. Winney, " 25 "

Also the increase of said negro slaves before & since the said 15th July, 1837, & all their future increase.

Also all the horses & mules, cattle, hogs, farming utensils, & other property attached to & belonging to the said plantation & negroes & necessary for the culture & maintenance thereof: to have & to hold all the aforesaid property, real & personal, unto them, the said John M. Chilton & Charles J. Searles, their heirs and assigns, forever; and the said parties of the first part for themselves, their heirs, &c., unto them, the said parties of the second part, do hereby covenant forever to warrant & defend the same against all claims or incumbrances to or on the said land & negroes & every & whatsoever kind. Nevertheless, this deed is executed on the follow-
400 ing condition, to wit, the said David McCaleb shall hold possession & receive the revenues of said property until default be made by him in the manner hereinafter described, but he shall not remove any of said slaves from the county of Warren aforesaid (except temporarily such menials or body servants as may be necessary to himself & family).

It is also covenanted that if the said David McCaleb shall pay punctually at the maturity of the note above described the sum of three thousand four hundred and eighty-eight $\frac{95}{100}$ dollars & all lawful interest then due thereon, then & in that event the said

Jacobs agrees & hereby empowers the said trustees to extend the time of payment of the residue of said note til- the first day of February, A. D. 1846, & if on the said first day of February, A. D. 1846, the said McCaleb shall punctually pay to said Jacobs the further sum of three thousand four hundred and fifty-five $\frac{80}{100}$ dollars & all interest then due & in arrears, at the rate of eight per cent. per annum (being less than the rate of conventional interest
401 allowed by the laws of Louisiana, where said note is payable, and which the said McCaleb hereby adopts & refers to as part of this agreement & the law of this contract) from the maturity of said note, then the time of payment shall be extended (as to the residue) til- the first day of February, 1847, and then on the like punctual payment of a like instalment, being $3,488.95, & all interest due & in arrears thereon, the time of payment of the residue shall be extended until the first day of February, A. D. 1848, when the remaining fourth, $3,488.95, & all interest shall be punctually paid by the said McCaleb without further extension or forbearance; but if the said McCaleb shall make default or fail to pay punctually at the maturity of said note the sum then to be paid as above specified, or shall afterwards fail to pay punctually at the times above specified the instalment & interest at every & each of said periods due & unpaid, then the said trustees are hereby empowered & required to proceed forthwith to the
402 execution of this trust & by a sale of the trust property cause of said debt, or so much thereof as may not have been previously paid, to be fully paid & satisfied, and to that end the said trustees, or either of them, are required upon default as aforesaid, & at the request of said Jacobs, or any holder of said note, to expose all of said property, or so much thereof as may be necessary to the payment of all arrearages hereby secured, to the highest bidder, at public sale, for cash, having first advertised the time & place of said sale (to be fixed according to the discretion of said trustees, provided the sale be not thereby postponed longer than 90 days after such request to sell) in some weekly newspaper published in the town of Vicksburg for the space of thirty days prior to said sale, & then out of the proceeds of such sale first to deduct all costs attending the execution of this trust, & to apply so much of the residue as may be necessary & sufficient to the full payment & discharge of
403 said debt to the said Jacobs, or of so much as may remain due, & all interest thereon at the rate of 8 per cent. as aforesaid, & refund the surplus, if any, to the said McCaleb; and it is expressly covenanted that by joining in this deed said Florida McCaleb declares her intention to relinquish in favor of said Jacobs as well her right of dower in the premises as all other interest therein; it is also covenanted & agreed that in case of said McCaleb's default, as above mentioned, the said trustees are hereby empowered & required to take possession immediately of said property, & to deliver possession of so much thereof as may by them be sold to the purchaser thereof, & this power shall be exercised by them separately as well as jointly.

In testimony whereof the said David McCaleb & his wife & the

said trustees & the said Charles A. Jacobs have hereunto set their hands & seals this 28th day of May, 1844.

D. McCALEB, JR. [SEAL.]
F. McCALEB. [SEAL.]
JNO. M. CHILTON. [SEAL.]
404 CHARLES J. SEARLES. [SEAL.]
CHARLES A. JACOBS,
By J. M. CHILTON,
His Ag't & Att'y-in-Fact as per Power of Attorney Duly Recorded Herewith.

Erasure on first page of part of line 26, and substitution of "fifty-five $\frac{80}{100}$;" also, interlineation of words & figures between 12th & 13th lines of first page; also, erasure in 2d line of 2d page and substitution of words fifty-five $\frac{80}{100}$; also, interlineation between 1st & 2d lines of 4th page, & between 12th & 13th lines of 4th page, & erasure in 22d line, & erasure in 23rd line, & substitution of figures, $3,488.95, & interlineation between 23d & 24th lines of 4th page, done & approved before signing.

D. McCALEB, JR.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me, the undersigned, Samuel B. Harwood, justice of the peace of said county, David McCabel, j'n'r, & acknowledged that he signed, sealed, & delivered the foregoing
405 deed of trust as his voluntary act and deed on the day & year therein specified & for the purposes therein set forth; also personally appeared before me, the undersigned, justice as aforesaid, Florida McCaleb, wife of said David McCaleb, who, having been first privately examined by me apart from her said husband, acknowledged that she signed, sealed, & delivered the said deed of trust as her voluntary act & deed on the day & year & for the purposes therein declared & set forth, & without any fear, threat, or compulsion of her said husband.

Given under my hand & seal this seventh day of June, 1884.

SAM'L B. HARWOOD, *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI, }
Warren County, } *ss:*

Personally appeared before the undersigned, Sam'l B. Harwood, a justice of the peace in & for said county, John M. Chilton & Charles J. Searles, who severally acknowledged that they signed, sealed, & delivered the foregoing deed as their act and deed on the day
406 and year therein specified and for the purposes therein set forth.

Given under my hand & seal this 7th day of June, 1844.

SAM'L B. HARWOOD. *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI, }
Warren County, } *ss:*

I, Alfred H. Rowlet, clerk of the probate court of said county, do hereby certify that the foregoing deed of trust and certificate were

filed for record in my office on the 21st day of June, A. D. 1844, whereupon I have made the same of record in book T, pages 49, 50, 51, & 52.

Given under my hand & seal of office this 29th day of June, A. D. 1847.

[SEAL.] A. H. ROWLETT, *Clk*,

THE STATE OF MISSISSIPPI, } ss:
Warren County, }

I, Alfred H. Rowlett, clerk of the *of the* probate court of said county' do hereby certify that the foregoing deed of trust from David McCaleb, Jr., and his wife to John M. Chilton and Charles J. Searles, trustees, together with the certificates of acknowledgment, &c., have been correctly copied from book T, pages 49, 50, & 51, of the record of deeds, &c., in my office.

Given under my hand and seal of office this 3d day of May, A. D. 1847.

[SEAL.] A. H. ROWLETT, *Clk.*

407 Endorsed: 4056. Exhibit A to the bill. Filed June 23, '47. L. V. Dixon, D. C.

Ex. B to bill.

This indenture, made and entered into this seventh day of May, in the year of our Lord one thousand eight hundred and forty-six, between David McCaleb Jr., and Florida McCaleb, his wife, of Warren county, State of Mississippi, of the first part; George W. McElrath, of the said county and State, of the second part, and William Laughlin and Charles J. Searles, of the county and State aforesaid, and Edmund C. Laughlin, of the city of New Orleans and State of Louisiana, merchants and partners under the name and style of Laughlin, Searles & Co., of the third and last part, —:

Whereas the said Laughlin, Searles & Co. have endorsed a certain draft drawn by the said David McCaleb, junior, on William Laughlin and Company, and accepted by them, bearing date the twenty-third day of March, in the year of our Lord one thousand eight
408 hundred and forty-six, payable seven months after the date thereof, to wit, on the twenty-sixth day of October, in the year eighteen hundred and forty-six, for the sum of three thousand two hundred and one dollars and sixty-one cents; and whereas also the said David McCaleb, junior, is indebted to the said Laughlin, Searles and Company in the sum of one thousand dollars, evidenced by the note of the said David McCaleb, junior, in favor of the said Laughlin, Searles & Company, bearing date the first day of May, in the year eighteen hundred and forty-six, and payable on the fifteenth day of November, in the year aforesaid, at the Bank of Louisiana, in the city of New Orleans; and whereas the said David McCaleb, junior, is desirous to save harmless and indemnify the said Laughlin, Searles and Company from any loss or damage they may sustain by the endorsement of the draft aforesaid, and also to secure the punctual payment of the said note for one thousand dollars:

Now, this indenture witnesseth: That the said parties of the
409 first part, for and in consideration of the premises and the further consideration of ten dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell and convey, unto said party of the second part, his heirs, executors, administrators, and assigns, forever, all that certain tract or parcel of land lying in the county of Warren and State of Mississippi, known and described as follows, to wit: Lot number two in section thirteen and lot number one in section thirteen, all in township fourteen, range two east, containing together about two hundred and twenty acres; also the tract of land at present possessed by said McCaleb and adjoining the two lots of land above described, containing about one thousand acres, being the same land heretofore purchased by David McCaleb and by him conveyed to David McCaleb, Jun., by deed of conveyance duly recorded in the office of the probate clerk of Warren county and here expressly referred to for greater certainty, and, moreover,
410 known and described as parts of sections twelve, thirteen, fourteen, & fifteen, in township fourteen, range two east; also the following-described negro slaves, to wit: Joe, aged thirty-nine years; Mary Jane, aged twenty-one years; Sylvia, aged thirty-six years; Priscilla, aged eighteen years; Ben, aged fifteen years; Betsy, aged twelve years; Alice, aged twelve years; Tom, aged thirty-four years; John, aged thirty years; Jacob, aged twenty-eight years; Cupid, aged twenty-nine years; Will, aged sixty-nine years; Bailey, aged fifty-nine years; George, aged forty-four years; Esther, aged nineteen years; Caroline, aged fourteen years, Field, aged twenty-one years; Betsy, aged thirteen years; Rhody, aged thirty-seven years; Priscilla, aged seventeen years; Thad, aged eleven years; Mariah, aged forty-four years; Lilly, aged twenty-four years; Ben, aged twenty-three years; Henry, aged seven years; Eliza, aged nineteen years; Anthony, aged eleven years; Bind, aged forty-two years; Caroline, aged twenty-seven years; Jack, aged twenty-one years; Elizabeth, aged sixteen years; Noah, aged ten years; Hannah, aged fifty-nine years; Eliza, aged twenty-seven years;
411 Mahala, aged twenty-seven years; Polly, aged twenty-six years; Mary Jane, aged twenty-six years; Judy, aged nineteen years; Winney, aged twenty-seven years; Charles, aged thirty-five years; Stephen, aged thirty years; Cash, aged twenty-five years; Judy, aged thirty *thirty*-three years; Louisa, aged twenty-three years; Bob, aged twenty years; Alick, aged fifteen years, and Sophy, aged forty years, together with all and singular the increase of said slaves; also all the horses & mules, cattle, hogs, farming utensils, and other property attached to and belonging to said plantation, and negroes *and* necessary for the cultivation and maintenance thereof; to have and to hold the aforesaid described real and personal estate unto the said party of the second part, his heirs, executors, administrators, and assigns forever, in trust nevertheless for the uses and purposes following—that is to say, that the said party of [the] second part shall permit the said party of the first part to retain

412 quiet and peaceable possession of the aforesaid real and personal property, and appropriate the profits thereof to their own use until default be made by the said David McCaleb, junior, in the payment of the draft aforesaid, endorsed by the said Laughlin, Searles and Company, or some part thereof, and then on such failure to — punctually the said draft or any part thereof, that the said party of the second part shall and will, when thereto requested by the said Laughlin, Searles and Company, or their assigns or representatives, proceed to sell to the highest bidder, at public aution, for ready money, the aforesaid real & personal property, or so much thereof as may be sufficient, having advertised in a newspaper published in the city of Vicksburg, in Warren county aforesaid, thirty days' notice of the time & place of such sale, and from the proceeds thereof, after defraying the expenses of this trust, pay to the said Laughlin, Searles and Company, their representatives or assigns,
the amount of said draft endorsed as aforesaid by the said
413 Laughlin, Searles and Company, and all lawful interest; and also the aforesaid sum of one thousand dollars evidenced by the note heretofore described, or so much of each said amounts as may be due and unpaid by the said David McCaleb, junior, and should the draft aforesaid be paid and taken up at maturity by the [said] David McCaleb, junior, then the said real and personal property to remain in the possession of the said parties of the first part until default in the payment of the note be made—that is to say, the note aforesaid for one thousand dollars—and then in such failure to proceed to sell in manner and form as hereinbefore described the aforesaid real and personal property, or so much thereof as may be sufficient, having given thirty days' notice as aforesaid; and from the proceeds thereof, after defraying the expenses of this trust, pay to the said Laughlin, Searles and Company, their representatives or assigns, the aforesaid sum of money and all lawful interest, or so much thereof as may be due and unpaid; and, after the pur-
414 poses of this trust have been fully accomplished, pay the balance, if any, to the said parties of the first part, their heirs, executors, administrators, or assigns.

But if the said party of the —, David McCaleb, junior, shall pay and discharge the sums aforesaid as they become due and payable, then this conveyance to become null and void.

In witness whereof the said parties of the first and said parties of the second part- have hereunto set their hands and seals this day and year first above written.

DAVID McCALEB, JR. [SEAL.]
F. McCALEB. [SEAL.]
G. W. McELRATH. [SEAL.]

The words "and lot number one, in section thirteen," interlined in the 42 line of the first page, "in township fourteen," in 6th line of the second page, and "Alick, aged fifteen years, and" in 31st line of 2d page, were all interlined before the signing of this instrument.

THE STATE OF MISSISSIPPI, }
Warren County, } *ss:*

415 Personally appeared before me, the undersigned, a justice of the peace in and for said county, David McCaleb, junior, and Florida McCaleb, his wife, and George W. McElrath, parties to the foregoing deed of trust, and acknowledged that they signed, sealed, and delivered the same on *on* the day and year therein mentioned as their act and deed; and the said Florida, wife of the said David McCaleb, junior, being by me privately examined separately and apart from her husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her husband.

Given under my hand and seal this seventh day of May, A. D. 1846.

JOHN CRAWFORD, *J. P.* [SEAL.]

STATE OF MISSISSIPPI, }
Warren County, } *ss:*

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were
416 filed for record in my office on the 13th day of May, 1846; whereupon I have made the same of record in book U, pages 245, 246, & 247.

Given under my hand and seal of office this 20th day of May, A. D. 1846.

[SEAL.] A. H. ROWLETT, *Clk.*

THE STATE OF MISSISSIPPI, }
Warren County, } *ss:*

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify that the foregoing deed of trust from David McCaleb, jun'r, and Florida McCaleb to George W. McElrath, together with the certificate, have been correctly copied from book W, pages 246, 246, & 247 of the record of deeds in my office.

Given under my hand and seal of office this 4th day of May, A. D. 1847.

[SEAL.] A. H. ROWLETT, *Clk.*

Endorsed: 4056. Exhibit B to bill of complaint. Filed June 23, '47. L. V. Dixon, D. C.

417 Ex. C to bill.

This indenture, made and entered into this 25th day of May, 1846, between David McCaleb, Jr., of the county of Warren & State of Mississippi, of the first part, John I. Guion, of the same county, of the second part, and A. M. Payne & John J. Green, merchants & partners under the style of Payne & Green; Jonathan McCaleb, D. M. Fisher, E. P. McDowell, W. L. Cambron, J. G. Ford, the representatives of R. L. Throckmorton & Robert Patterson, deceased, late merchants under the firm of Throckmorton & Patterson; John J. Green and Benjamin Crump, merchants, under the firm of J. J.

Green & C.; Charles E. Sherman and Morris Emanuel, creditors of said McCaleb, of the third part, witnesseth: That whereas the said McCaleb is indebted to the said parties of the third part, respectively, as follows, to wit, to J. J. Green & Co., in the sum of $828.43, as evidenced by said McCaleb's note, dated June 20th, 1845, payable some months after date, & the further sum of $1,158.11 by open account, due on the first day of January, 1846; to Payne &
418 Green the sum of $5,496.84, as evidenced by his promissory note, dated March 20th, 1841, payable one day after date; to E. P. McDowell, $2,000.00 on open account, now due; to D. M. Fisher, $800.00 on open account, now due; to Jonathan McCaleb, $54,524.34 on open account, due April 11th, 1846; to W. L. Cambron, $180.00, by note, date not recollected; to J. G. Ford, by note, date not recollected, $170,00; to the representatives of Throckmorton & Patterson on open account, $300.00; to Charles E. Sherman, of the city of Washington, by written acknowledgment, $2,500; to Morris Emanuel on open account, $400.00. And whereas said McCaleb is anxious to secure the payment of said several sums of money to his said several creditors: Now, for that purpose, and in consideration of the sum of ten dollars paid to him by said John I. Guion, the said McCaleb hath given, granted, bargained, sold, and conveyed, and by these presents doth bargain, sell, & convey, to the said John I. Guion the following described real & personal property, to wit: All that tract or parcel of land situate, lying, and being in the county of War-
419 ren & State of Mississippi, on the Mississippi river, on which said McCaleb now resides, containing about twelve hundred & twenty acres, and designated by the numbers of survey as follows, to wit: Lots one & two, in section thirteen, T. 14, R. 2 E., containing two hundred & twenty acres, the numbers of survey of the other thousand acres, being parts of sections, 12, 13, 14, & 15, in T. 14, R. 2 E., being a British grant, and the following slaves & other personal property, to wit, Joe, Mary Jane, his wife, & Mary Jane, his daughter; Amelia, John, Judy, Dave, Eda, Eliza, Jessie, Ellen, Austin, Sylvia, Priscilla, Ben, Betsy, Ailsey, Kate, Harry, Jeff., Maria, Lilly, Rose, Eliza, Anthony, Henry, Augustine, Hetty, Mahala, Augustus, Vina, Jack, Betty, Noah, Rhody, Priscilla, Thad., Will, Baily, Cupid, Carroline, Fannie, Hannah, Milly, Stephen, Polly, George, Hannah, Anna, Field, Esther, Carroline, Betsy, Tom, Winney, & Bob, and forty horses, one hundred head of hogs, one hundred & twenty-four head of sheep, & fifty head of cattle, said slaves & stock be-
420 ing on & belonging to said tract of land; to have and to hold the said tract of land & the improvements & appurtenances belonging thereto & the said slaves and personal property to the said John I. Guion & his heirs & assigns forever.

Provided, however, That these presents and the grant hereby made are upon the following condition & for the trust purpose hereby declared, to wit: That said John I. Guion shall, upon the request of any of said creditors of said McCaleb enumerated in this deed, proceed to sell said land and negroes and other personal property at public sale to the highest bidder, for cash, on the premises, having given thirty days' previous notice of the time and place of sale in some

public newspaper printed in the city of Vicksburg, & shall, after paying the expenses & cost of said sale, distribute the proceeds of said sale among said creditors *pro rata* according to their claims respectively, without preference or distinction, and, — said property shall sell for a larger amount than is sufficient to pay all of said claims,
421 shall pay the surplus to said McCaleb, and upon the condition that said McCaleb shall be permitted to retain the possession & use of said property until the same shall be sold by virtue of this deed; & if said McCaleb shall pay said debts before any sale shall be made by virtue of this deed the same shall become void & of no effect.

In testimony whereof said McCaleb & Guion have hereunto set their hands & seals the day & year first above written.

D. McCALEB, Jr. [SEAL.]
JNO. I. GUION. [SEAL.]

THE STATE OF MISSISSIPPI, } ss:
Warren County, }

Personally appeared before me, Alfred H. Rowlett, clerk of the probate court of said county, the within-named David McCaleb and John I. Guion, who severally acknowledged that they signed, sealed, and delivered the within and foregoing deed on the day and year therein mentioned as their act and deed.

Given under my hand and seal of office this 25 day of May, A. D. 1846.

A. H. ROWLETT, *Clk.*

422 STATE OF MISSISSIPPI, } ss:
Warren County, }

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were filed for record in my office on the 25th day of May, 1846. Whereupon I have made the same of record in book U, pages 257 & 258.

Given under my hand and seal of office this 19th day of June, A. D. 1846.

A. H. ROWLETT, *Clk.*

Endorsed: 4056. Exhibit C to bill. Filed for record 25th day of May, 1846. A. H. Rowlett, cl'k. Filed June 23, '47. L. V. Dixon, D. C.

Ex. D. to bill.

John M. Chilton & C. J. Searles, Esqrs.

GENTS: By deed of the date of 25th of May, 1846, recorded
423 in book U, pages 257 & 258, of the records of Warren county, David McCaleb, Jr., of Warren county, conveyed to me in trust for the purpose of paying certain creditors their claims as specified in said deed all the property which had been previously conveyed to you as trustees to secure the payment of a debt of about $15,000 to Jacobs, of New Orleans, & which by virtue of said deed was on the 15th day of June last sold by you at trust sale to Joseph E. Davis, Esqr.

There is, or ought to be, in your hands $13,436.06 of the proceeds of said sale over & above the amount of the *the* debt of Jacobs, to pay which the property was sold.

This surplus I claim, as trustee for the creditors of David McCaleb, Jr., as specified in the deed above referred to, for distribution among said creditors *pro rata* according to their respective claims.

Messrs. Laughlin & Searles assert themselves to be creditors of McCaleb to the extent of about $4,000.00, &, I understand, claim satisfaction of their demand out of the funds in your hands.

424 I hereby give you notice not to pay any portion of said fund to Laughlin & Searles, as McCaleb, by deed of trust of older date than the deed to me, conveyed to G. W. McElrath in trust to secure the said Laughlin & Searles the payment of said sum other property than that sold by you of amply sufficient value to pay & discharge the same, which has not yet been sold, & said Laughlin & Searles are not entitled to any portion of the fuud in your hands until, by a sale of the property on which they have a specific & special lien to the exclusion of other creditors, it shall have been ascertained that the fund arising from such sale is insufficient to satisfy their demand.

JOHN I. GUION,
Trustee for Creditors of David McCaleb.

We acknowledge receipt of the above notice, remarking, however, that the claim of Laughlin, Searles & Co. has been long paid.

JNO. M. CHILTON,
CHAS. J. SEARLES,
Trustees.

425 Endorsed: 4056. Exhibit D to the bill. Filed June 23, '47. L. V. Dixon, D. C.

Ex. E to O bill.

THE STATE OF MISSISSIPPI:

At a circuit court held at the court-house in and for the county of Warren on Saturday, the thirtieth day of May, in the year of our Lord one thousand eight hundred and forty-six—present, the Hon'l George Coalter, judge; Claiborne Steele, sheriff; Richard R. Randolf, clerk—among other proceedings in said court were the following, to wit:

ANDREW M. PAYNE and JOHN J. GREEN, Merchants, &c., Under the Firm of Payne & Green, Plaintiffs, *ag'st* DAVID MCCALEB, Junior, Def't. } 300. Lss.

In case.

This day came the parties, by their attorneys, and the defendant, by attorney, withdraws the plea by him herein pleaded, and
426 further defends not, but makes default. Therefore it is considered by the court that said plaintiffs recover of said defendant

the sum of seven thousand eight hundred and seventy-eight dollars and eighty cents damages, sustained by reason of the non-performance of the promise and assumption in the declaration mentioned, and also their costs herein expended.

I, Albert M. Newman, clerk of the circuit court of said county, do certify the foregoing to be a true copy from the minutes of said court.

Given under my hand and seal of office, at Vicksburg, this 8th day of December, A. D. 1847.

A. M. NEWMAN, *Clk.*

Endorsed: 4056. Exhibit E to bill. Filed Dec'r 10, '47. Russell, D. C.

427 Ex. F to bill.

THE STATE OF MISSISSIPPI:

At a circuit court held at the court-house in and for the county of Warren on Thursday, the eleventh day of June, in the year of our Lord one thousand eight hundred and forty-six—present, the Hon'l George Coalter, judge; Claiborne Steele, sheriff; Richard R. Randolph, clerk—among other proceedings in said court on the day and year last aforesaid were the following to wit:

JONATHAN MCCALEB, Pl'ff,
vs.
DAVID MCCALEB, Def't. } 63. App'r.

In case.

This day came the plaintiff, by his attorneys, and thereupon came a jury to wit, L. Standard, J. C. Harris, J. D. Cato, D. C. Brook, N. Gray, John Strother, N. B. Batchelor, G. G. Noland, J. B. Ragan, Sam. Lum, W. R. Norcom, and Eugene Newman, who, being empaneled and sworn diligently to enquire of damages herein, upon their oath do say: "We the jury assess the plaintiff's damages at $55,069.34." Therefore it is considered by the court that said plaintiff recover against said defendant the sum of fifty-five thou-
428 sand and sixty-nine dollars and thirty-four cents, the damages by the jury aforesaid assessed, and also his costs herein expended.

I, Albert M. Newman, clerk of the circuit court of said county, do hereby certify the foregoing to be a true copy from the minutes of said court.

Given under my hand and official seal at Vicksburg this 8th day of December, A. D. 1847.

[SEAL.] A. M. NEWMAN, *Clk.*

Endorsed: 4056. Exhibit "F" to bill. Filed Dec'r 10, '47. Russell, D. C.

Ex. G to bill.

Know all men by these presents that I, Jonathan McCaleb, for and in consideration of the natural love and affection which I have for my nieces, Eleanor J. and Laura S. Guion, daughters of John I. Guion, *I* have assigned, transferred, and conveyed to said John I. Guion, in trust for the use of his two said daughters, all of my *pro rata* and interest among the creditors of David McCaleb, Jr., of, in, and to the estate of the said David McCaleb, Jr., and the proceeds of sales of his property in the hands of Chilton and Searles,
429 trustees, after deducting therefrom a reasonable compensation to said John I. Guion for his services in attending to the collection and arrangement of my claim against said D. McCaleb, Jr.

Witness my hand and seal this 7th day of June, A. D. (1846) eighteen hundred and forty-six.

(Signed) JONA. M'CALEB. [SEAL.]

Teste: JOHN THATCHER.

It is further hereby declared to be my intention, after the payment as above of whatever *pro rata* I may be entitled to with other creditors, to relinquish to said David McCaleb the remainder of my claim against him, and I do hereby relinquish the balance thereof to him.

Witness my hand and seal June 17th, 1846.

(Signed) JONA. McCALEB. [SEAL.]

Test: JOHN THATCHER.

Endorsed: Exhibit No. 7 G to the bill.

Ex. H to bill.

HURRICANE, *Feb'y* 18*th*, 1847.

John I. Guion, Esq.

DEAR SIR: Your letter of the 17th inst. was this moment
430 rec'd, and in reply I have to say that I have no objection to the mode you propose for ascertaining the amount due you of the surplus after paying the trust deeds upon the property of David McCaleb, Jr. No one can be more unwilling than myself to any litigation, and therefore am entirely willing to adopt this or any other mode to ascertain the amount. In a former letter I understood you to claim separate property of Mrs. McCaleb should be subjected to sale, simply because she had become security for [her] husband, and bound her own property by deed of trust for its payment, and should have been paid. This property I suppose you knew was not the property of Mr. M., and that he had never exercised any acts of ownership over it. With this understanding, I will try to meet you at the earliest day that circumstances will allow, and to arrange the payment of your share in the way most satisfactory. The other matter I will also attend to at the same time.

Respectfully, J. E. DAVIS.

Endorsed: (Post-mark) John I. Guion, Esqr., Jackson, Miss. Exhibit to bill, H. Filed June 23, '47. L. V. Dixon, D. C.

431 Superior Court of Chancery of State of Mississippi, *To wit:*

To Joseph E. Davis, Florida A. McCaleb, John M. Chilton, and Charles J. Searles, Greeting:

For certain causes ordered before us in our superior court of chancery of the State of Mississippi, we command and strictly enjoin you that, laying all other matters aside, and notwithstanding any excuse, you personally appear at the superior court of chancery to be holden at the court-room at the city of Jackson on the first Monday in December next ensueing, to answer to a bill of complaint exhibited against you and others by A. M. Payne *et al.*, complainants in our said court, and further to do and receive what our said court shall have considered of in this behalf, and this you shall in nowise omit, under the penalty of one hundred dollars, as well as the consequences that may fall thereon; and have then and there this writ.

Witness the Honorable Steven Cocke, chancellor of the State of Mississippi, at the city of Jackson, the first Monday in June in
432 the year of our Lord one thousand eight hundred and forty-seven, and of the sovereignty and Independence of the United States of America the seventy-first.

Issued the 23rd day of June, 1847.

To the sheriff of Warren county to execute and return.

[SEAL.] ROBERT HUGHES, *Clk,*
By L. V. DIXON, *D. C.*

Endorsed: 4056. In chancery, Jackson. To December term, A. D. 1847. S'p'a. She'ff Steele. 4 def'ts, 3 copies, $7.25. Rec'd June 25th. 1847. C. Steele, sh'ff. Executed on J. M. Chilton Nov'r 8th, 1847, C. Steele, sh'ff, by C. E. Yeaman, D. C. Executed on Charles J. Searles Nov'r 11th, 1847. Ch's E. Yeamans, d'p'y sh'f, for C. Steele, sh'f. Executed on J. E. Davis and Florida A. McCaleb and copies delivered each Nov'r 12th, 1847. C. Steele, sh'ff, by C. E. Yeamans, D. S.

STATE OF MISSISSIPPI, *Hinds County:*

Personally appeared before the undersigned, commissioner
433 of the superior court of chancery, John I. Guion, who made oath that Charles A. Jacobs, William Laughlin, and Edmund C. Laughlin, defendants to a bill of complaint in said court by Payne and Green and others *vs.* Joseph E. Davis and others, are not citizens or residents of the State of Mississippi, but resident citizens of the State of Louisiana.

JOHN I. GUION.

Sworn to and subscribed before me June 23, '47.

L. V. DIXON,
Com'r in Chancery.

Com'r's fee, 50c.

Endorsed: 4056. Filed June 23, '47. L. V. Dixon, D. C.

THE STATE OF MISSISSIPPI:

Superior Court of Chancery. August Rules.

A. M. PAYNE *et al.*
vs.
JOSEPH E. DAVIS *et al.* } 4056.

AUG. 2ND, 1847.

Upon opening the matters of this bill and it appearing satisfactorily that the defendants, Charles A. Jacobs, Wm. Laughlin, and Edmund C. Laughlin, are not citizens of this State, but reside
434 beyond the limits thereof, so that the ordinary process of this court cannot be executed upon them, therefore it is ordered that unless the said defendants enter their appearance herein on or before the first day of the next term of this court, to be holden at the court-room in the city of Jackson, on the first Monday of December next ensuing, and plead, answer, or demur to the said bill of complaint, the several allegations thereof will be taken for confessed by them, set for hearing *ex parte*, and the matters thereof decreed accordingly. It is further ordered that a copy of this order be published in the "Southron," a newspaper printed in the city of Jackson, once a week for two months successively.

August 20, 1847. 34—2 m.

ROBERT HUGHES, *Clerk*,
By L. V. DIXON, *D. C.*

GUION & DOWNS, *Sol's.*

THE STATE OF MISSISSIPPI, } *ss:*
Hinds County, }

I, Thomas Palmer, publisher of the newspaper entitled "The Southron," printed at Jackson, in the county and State aforesaid, being duly sworn, do depose and say that a notice, of which the
435 foregoing print is a copy, was published in said newspaper for 10 weeks successively, as follows: Commencing in No. 34 of volume 7, of the date of August 20th, 1847, and ending in number 43 of volume 7, of the date of October 22d, 1847.

THOS. PALMER,
Publisher of "The Southron."

Sworn to and subscribed this 11th day of November, 1847, before me—

J. P. OLDHAM,
Justice of the Peace.

THE STATE OF MISSISSIPPI, } *ss:*
Hinds County, }

I, J. P. Oldham, the justice of the peace before whom the above affidavit was made, do certify that the newspaper containing the public notice therein specified have been produced before me and by me compared with the copy of said notice and with the affidavit

of the said Thomas Palmer, and that they are correct and truly made.

Given under my hand and seal this 11th day of November 1847.

J. P. OLDHAM, [L. S.]

A Justice of the Peace for the County of Hinds.

Endorsed: 4056. Proof of publication fee, $10.00; paid by Guion. Filed Dec'r 10th, 1847. Russell, D. C.

436 (NOTE BY CLERK—On the docket of this cause I find the following entry: "*Pro con.*, V. J. M. Chilton, C. J. Searles, J. E. Davis, F. A. M'Caleb, C. A. Jacobs, Wm. Laughlin, and E. C. Laughlin, P. I," but upon investigation I find that the page to which reference is made has been torn from the minute book and cannot be found. Clerk of supreme court.)

Motion to Set Aside Judg. Pro Confesso and Leave to File the Answer of Joseph E. Davis.

PAYNE & GREENE *et al.*
vs.
JOSEPH E. DAVIS *et al.* } 4056.

Let the motion be sustained. I have looked into the answer and the bill. I have previously decided that the conveyance by the wife by uniting with her husband in the disposition of her separate property freely and fully is valid, though it be to pay the debts of the husband. I am inclined to the opinion, however, that on such payment the wife would be entitled to be subrogated like any other security. Of the $15,000 surplus, after paying off the deed in trust to Chilton & Searles, the deed to M'Elrath for Laughlin &
437 Searles for $3,000, being older than the deed to Guion, would have precedence, and Davis being assignee would have right to retain.

The separate property of Mrs. M'Caleb, mentioned as belonging to her, would be liable to pay the deed to M'Elrath or Davis as assignee; but if so paid it would seem as if Mrs. M'Caleb, as security, would be entitled to occupy the position to claim as surety and take precedence of the deed in trust to Guion for M'Caleb's other creditors. Regarding this as the *prima facie* situation of the case as made by the exhibits and allegations, I ought to allow the answer to be filed that the rights of the parties may be truly ascertained.

S. COCKE.

Endorsed: 4056. Opinion on motion to set asid- *pro confesso.*

(And on page 108 of minute book M there appears the following order:)

A. M. PAYNE *et al.*
v.
J. E. DAVIS *et al.* } 4056.

SATURDAY, *March 11th, A. D.* 1848.

Upon motion of the defendants herein, by counsel, it is ordered that that the *pro confesso* heretofore entered against them be set aside with leave to file their answers, which are accordingly filed.

438 (*Answer of J. E. Davis.*)

The Honorable Steven Cocke, chancellor of the State of Mississippi.

The separate answer of Joseph E. Davis to the bill of complaint exhibited in this honorable [court], wherein Andrew M. Payne and others are complainants and this respondent and others are defendants.

This respondent, now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in said bill contained, for answer thereto, or to so much thereof as he is advised it is material or necessary for him to answer, answering, says that said David M'Caleb, being indebted to the firm of Lambeth & Thompson, of the city of New Orleans, in the sum of twenty-five thousand eight hundred and seventy-six dollars and forty-seven cents ($25,876.47), for the better securing the payment of said —, on the 15th day of July, 1837, executed a deed of trust to John M. Chilton and Wm. C. Smedes as trustees, by which said deed he conveyed to said Chilton and Smedes, as said trustees, cer-
439 tain lands and negroes therein mentioned, as will appear by reference to said deed hereto annexed marked Exhibit No. 1, and prayed to be taken as a part of this answer; that after the debt due to said Lambeth and Thompson had been reduced by said M'Caleb with the aid of this respondent (who is the father of Florida M'Caleb, wife of said David) to the sum of thirteen thousand and nine hundred and fifty-five dollars and eighty cents ($13,955.80) the said Lambeth & Thompson assigned the said deed of trust and the said balance of their debt to the said Charles A. Jacobs; that on the 7th day of June, 1844, the said David M'Caleb and Florida M'Caleb, his wife, executed a deed of trust to John M. Chilton and Charles J. Searles, as trustees, to secure the payment of the said balance so due to the said Jacobs by assignment from the said Lambeth and Thompson, by which said last-mentioned deed of trust the said M'Caleb and wife conveyed to said Chilton and Searles as trustees all the property embraced in the said deed of trust to the said Chilton and Smedes, together with the increase of the slaves therein mentioned.

440 That it is true, as this respondent is informed and believes, that the said David M'Caleb and Florida M'Caleb, his wife, executed the deed of trust mentioned in said bill to the said George W. M'Elrath, as trustee, to secure Laughlin, Searles & Co. the payment of four thousand two hundred and one dollars and sixty cents ($4,201.60), of which said last-mentioned amount this respondent alleges that the sum of two thousand one hundred dollars ($2,100) or thereabouts was due from the said David M'Caleb to the said Laughlin, Searles & Co. on account of advances made by them towards the payment of the debt due from said M'Caleb as above mentioned.

This respondent states that it is not true, as alleged in said bill of complaint, that the property embraced in the said last-mentioned

deed of trust to M'Elrath and not included in said deed to Chilton and Searles was the property of said David M'Caleb, or that the same could be lawfully subjected to the payment of the debt due from him to the said Laughlin, Searles & Co.; on the contrary, this respondent states that the following negroes, to wit, Charles,
441 Steven, Cash, Alleck, Sophy, Judy, and Louisa, were given by this respondent to his said daughter, Florida M'Caleb, as will be seen by refference to the deed of conveyance bearing date on the 13th day of April, 1846, and which is hereunto annexed, marked Exhibit No. 2, and prayed to be taken as a part of this answer, and that the said negroes at the time the said deed of trust was executed to the said M'Elrath were the separate property of the said Florida M'Caleb.

This respondent states that it is true, as he is informed and believes, that the said David McCaleb executed to the said complainant, John I. Guion, as trustee, the deed of trust mentioned in said bill and made a part thereof.

This respondent states that in the said several deeds of trust there appears to be some discrepancy in the description and number of negroes therein mentioned. He believes, however, the truth to be that the negroes conveyed in said deed of trust to Chilton and Searles, together with their increase, included all the negroes embraced in the deed of trust to the said McElrath, with the exception of such slaves included in McElrath's deed as were the separate property of
442 the said Florida McCaleb. That the number of slaves conveyed by the said David McCaleb to the said complainant Guion, as trustee, appears on the face of the said deed to be fifty-six (56) instead of fifty-nine (59), as alleged in said bill; and respondent states that the number conveyed has been inadvertently increased by including one or more slaves which are and were the separate property of the said Florida McCaleb, and also, as respondent believes, by inserting the names of the same slaves in different parts of said deed to said complainant Guion more than once.

This respondent states that the debt due from the said David McCaleb to the said Laughlin, Searles & Co., as above specified, was the individual liability of said David, and that the said Florida McCaleb, in executing the deed of trust to the said McElrath, joined in the making thereof only as a surety for her husband. Respondent respectfully submits to this honorable court whether the said Florida McCaleb, being at the time of making said deed of trust to said McElrath a married woman, could lawfully contract as a surety
443 for her said husband or in any manner bind her separate property for the payment of her said husband's individual debts.

Respondent states that the property of said David McCaleb embraced in said deed of trust to McElrath was amply sufficient to pay the entire debts due from said McCaleb to the said Jacobs and to the said Laughlin, Searles & Co., as appears from the amount for which said property was sold under said deed of trust to said Chilton & Searles, as stated in said complainant's bill; and this respondent therefore alleges that even in the said contract, if the said Florida

McCaleb, as surety for her said husband, should be deemed valid and binding in law, the separate property of the said Florida could not be taken and applied towards her said husband's debts to the said McElrath until all the property of her said husband liable for his said debt had been first applied towards the payment thereof and fully exhausted.

This respondent, answering, says that he has fully paid and satisfied to the said Laughlin, Searles & Co. the amount due to
444 them from the said David McCaleb, to wit, the said sum of four thousand two hundred and one dollars and sixty cents ($4,201.60), and took from said Laughlin, Searles & Co. an assignment to this respondent of the said deed of trust mad- to said McElrath for their benefit, as will be seen by refference to said deed of trust and the assignment thereof hereunto annexed, marked Exhibit No. 3, and prayed to be taken as a part of this answer.

Respondent states that at the sale of said McCaleb's property under said deed of trust to Chilton & Searles this respondent purchased the lands mentioned in said deed, and also fifty-three (53) negroes, being the number conveyed in said deed, together with their increase: that he did not purchase any of the stock or farming utensils mentioned in said deed, and has never claimed, nor does he now claim, any interest whatever in or to the same or to any part thereof.

This respondent further states that he has paid to the said Jacobs the amount due to him from the said David McCaleb, with the exception of about five thousand dollars ($5,000), for the pay-
445 ment of which said residue the said Jacobs now holds this respondent's note, and this respondent has been informed by John M. Chilton, Esqr., one of the trustees in said deed of trust to Chilton & Searles, that the said Jacobs has directed the said Chilton & Searles to convey to this respondent all the property purchased by him at the sale of said McCaleb's property under their said deed of trust.

This respondent further states that the said sale of said McCaleb's property under said deed of trust to said Chilton & Searles was for cash; that said respondent, on the morning of the day of sale, inquired of said Chilton in case said respondent should become the purchaser of any property at said sale what time would be given to make payment therefor; that said Chilton replied that no time could be given for payment and that the sale would be for cash.

That the said complainants, John I. Guion and Johnathan McCaleb, in person, and the said complainants, Green & Payne, by their attorney, H. S. Douglass, were present at said sale and bid for each and every article of property then and there sold and purchased by this respondent; that said McDowell was also
446 present at said sale, but respondent does not recollect that he bid for any of said property; that the day following the day of sale the said Chilton and Searle entered into an arrangement with this respondent in reference to the payment of the purchase-money for said lands and negroes, subject, however, to the ratification of the said Jacobs, who afterwards approved and ratified the same.

This respondent further states that the said Jonathan McCaleb and the said Payne & Green, in consequence of the judgments which they had obtained against the said David McCaleb, possessed a great advantage over other bidders at the sale of said David's property, and they ran said property up greatly beyond what this respondent believes the same would have been sold for had it not been for the advantage resulting to them from said judgments.

This respondent has never claimed to be exonerated from the payment to such person or persons as might be justly entitled to the same of the balance of said purchase-money, after deducting the debts due to said Jacobs and to said Laughlin, Searles & Co.,
447 and this respondent now states that he holds said surplus subject to such order as this honorable court may see proper to make in the premises.

This respondent denies all and all manner of fraud and unlawful combination and confederacy wherewith he is charged in said bill, without this, that there is any other matter, cause, or thing in said bill of complaint contained material for this respondent to make answer unto and not herein and hereby well and sufficiently answered, confessed, avoided, or denied, is true to the knowledge or belief of this respondent. All which matters and things this respondent is ready and willing to aver, maintain, and prove as this honorable court shall direct; and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

J. E. DAVIS.

HORITIO J. HARRIS,
For Defendants Davis and Mrs. McCaleb.

STATE OF MISSISSIPPI, *ss:*

448 Personally appeared before me the above-named Joseph E. Davis, and, being sworn, on his oath says that the facts set forth in the foregoing answer, as far as stated as of his own knowledge, are true, and as far as stated from information derived from others he believes them to be true.

Sworn to and subscribed this 24th day of January, 1848.

L. V. DIXON,
Com'r in Ch'y.

Com'r's fee, 50c. Paid resp't.

Endorsed: 4056. 11th March, 1848. Let the answer be filed. S. Cocke, ch'l.

449 *Answer of Searles.*

To the Honorable Steven Cocke, chancellor of the State of Mississippi:

The separate answer of C. J. Searles, of the firm of Laughlin, Searles & Co., and codefendant to a certain bill of complaint filed by A. M. Payne & others *vs.* J. E. Davis & others:

This respondent, for answer to so much of said bill as he deems it

material for him to answer, answering, saith: That it is true, as stated in said bill, that said sale of land and negroes was made by this respondent and John M. Chilton as trustees; that J. E. Davis became the purchaser thereof at the sum of about $29,000; that at said sale this respondent produced the said deed of trust to Laughlin, Searles & Co., and gave notice that he would retain enough of the proceeds, after satisfying said Jacobs' deed of trust, to pay the amount due on said mortgage to said Laughlin, Searles & Co., amounting to upwards of $4,000; that he did retain the said amount; that is, the said Josep- E. Davis assumed and satisfied the said claim of said Laughlin, Searles & Co., and took an assignment from them
450 of their said mortgage. This respondent is advised and believes that said mortgage of said Laughlin, Searles & Co. was entitled to satisfaction next to said Jacobs' deed of trust out of the proceeds of said property so sold as aforesaid, and in preference of complainants' deed of trust or judgment, which — junior both to the lien- of Jacobs and of said Laughlin and Searles. This respondent admits that his said deed of trust embraces some property not embraced in said deed of trust to complainants, but that he is advised and believes that such property belonged to Mrs. Florida McCaleb, and was not subject to the lien of Laughlin, Searles & Co., and that besides such property was wholly insufficient in value to pay the said claim of said Laughlin, Searles & Co. This respondent states that said J. E. Davis has not yet paid to him and his cotrustee the balance of $9,754.20, but has promised to do so as soon as the said complainants shall agree to give a receipt therefor in full satisfaction of their claim to the proceeds of said sale, or when this court shall have so directed, this respondent and his cotrustee,
451 said Chilton, still retaining the title to said property on the condition of conveying the same to said Davis when said balance shall have been so paid. This respondent, having fully answered all the matters in said bill of complaint which he is advised it is material for him to answer, prays to be hence dismissed with his reasonable costs, and that your honor will make such further decree as from the premises may seem equitable and just. And your petitioner will ever pray, &c.

CHARLES J. SEARLES.

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before the undersigned, Samuel B. Harwood, Esq., justice of the peace of said county, the within-named C. J. Searles, and made oath that the matters and things contained in the foregoing answer in manner and form as therein set forth, so far as stated of his own kno-ledge are true, and so far as stated on the information of others he believes them to be true.

CHARLES J. SEARLES.

Sworn to and subscribed before me this 9th day of June, 1848.

SAM. B. HARWOOD, *J. P.*

Endorsed: 4056. Filed June 10, '48. L. V. Dixon, D. C.

452 *Answer of Florida M'Caleb.*

To the Honorable Steven Cocke, chancellor of the State of Mississippi:

The separate answer of Florida M'Caleb to the bill of complaint of John I. Guion, as trustee for the benefit of A. M. Payne and others against her and others, as defendants.

This respondent, saving and reserving to herself all manner of exception to the numerous errors and misstatements and imperfections of said bill of complaint, for answer thereto or so much thereof as she is advised is material or necessary to answer, answereth and sayeth: It is true her late husband, David M'Caleb, Jr., executed about the year 1837 a deed of trust to certain property therein mentioned, and *to* which she refers to Chilton & Smedes to secure the payment of the sum of twenty-five thousand and — dollars or thereabouts to Lambeth & Thompson, of the city of New Orleans, and about the year 1844, as she is informed, transferred said deed of trust or the balance due thereon to C. A. Jacobs, of said city; and that her said husband, about the time stated in complainant's bill, exe-
453 cuted a deed of trust to Chilton & Searles for the purpose of securing said balance to the said Jacobs in the execution of which this respondent joined with her said husband.

This respondent, further answering, sayeth that it is true her said husband had become indebted to the said Laughlin, Searles & Co. principal-y, she believes, for money advanced to pay a portion of the debt due to Jacobs, and it being apprehended that the property included in the deed of trust to secure the debt to the said Jacobs was insufficient to pay both debts, this respondent offered and agreed that certain slaves, the separate property of this respondent, should be included in a deed of trust to secure the said debt due by her said husband to Laughlin, Searles & Co., and this respondent joined -he said husband in the deed of trust to Geo. W. McElrath, which, in addition to the property already conveyed to Chilton & Searles, included the said slaves of this respondent, and which are more particularly mentioned in the answer of her codefendant, J. E. Davis, on file in your honorable court, and for which she refers for greater certainty.

This respondent, further answering, sayeth there are various
454 errors in the descri ption of the slaves mentioned in the deeds of trust, and particularly in this: that there no such slaves as Jeff. and Jacob, and but one of the name of Ben, nor is there more than one of the name of Steven, and the said Steven is the separate property of this respondent, and various other repetitions, which she does not understand. This respondent denies that the said slaves mentioned in said trust deed to G. W. McElrath, in addition to those mentioned in the deed to Chilton & Searles and their increase, were the property of her late husband, or that he ever claimed a right of property therein.

This respondent refers to the answer of her codefendant, J. E. Davis, and prays the same to be taken as a part of her answer.

This respondent having fully answered without this, that there be any other matter or thing not answered, &c., prays to be hence dismissed with her costs, &c.

H. J. HARRIS,
For Mrs. McCaleb.

STATE OF MISSISSIPPI, *Warren County:*

Personal-y appeared before the undersigned, justice of the peace for said county, Florida McCaleb, and made oath that the facts
455 set forth in the foregoing answer, so far as stated of her own knowledge, are true, and so far as related *of* the information of others she believes to be true.

FLORIDA McCALEB.

Sworn to and subscribed this 5th day of February, 1848.
JOHN CRAWFORD, *J. P.*

Endorsed: No. 4056. Filed by leave of court M'ch 11th, '48. L. V. Dixon, D. C.

Answer of Chilton, Trustee.

The separate answer of John M. Chilton, one of the trustees of David M'Caleb, use of C. A. Jacobs and codefendant, with others, to a certain bill of complaint filed by Payne & Green *et al.* in this honorable court.

To the Honorable Steven Cocke, chancellor of the State of Mississippi:

This defendant, answering, sayeth that said sale of the trust property described in complainant's bill was for cash, and so proclaimed to be. It was, however, understood by J. E. Davis that Jacobs would extend to him the time for the payment of the trust debt, so far as said Jacobs was concerned. At the sale respondent told Johnathan M'Caleb, in reply to said McCaleb's questions, and the same was made known to Col. Douglas, the agent of Payne & Green,
456 and to said Guion, that said Jacobs would extend the same time to them upon equally approved security, and respondent says that in consequence of this the said Douglas bid for said property, as this respondent believes, a larger sum than he otherwise would have done, and that the property sold brought more, therefore, than it *would* otherwise would have done. Respondent believes that said Laughlin & Searles were entitled to payment of their said trust claim next to said Jacobs, and this respondent did not resist the payment thereof, and prays your honor that said claim be allowed as a credit to this respondent and his cotrustee.

This respondent states that C. A. Jacobs was the purchaser by the trustees of said property with the understanding that they should convey to the said Davis upon his paying all the purchase-money. Said Davis has paid all to said Jacobs except about $5,000; all to said Laughlin & Searles, as this respondent believes, and has always expressed a readiness to pay the balance to said Guion as trustee,

provided said Guion would consent to allow what had been paid to said Searles and Laughlin as aforesaid, but to this the said
457 Guion would not consent. Respondent, doubtful under all circumstances how to act, resolved to await the decision of this court, taking in the meantime an indemnity bond from said Davis to save this respondent harmles- in the premises.

This respondent, having fully answered so much of said complainant's bill as it is material for him to answer, prays your honor to instruct him how to act in the premises, &c.

And he will ever pray, &c.

JOHN M. CHILTON.

Sworn to and subscribed before me June 6, '48.

L. V. DIXON,
Com'r in Chancery.

Endorsed: 4056. Filed June 6, '48. L. V. Dixon, D. C.

458 EXHIBIT No. 1 to J. E. Davis' answer.

This indenture, made and entered into this 15th day of July, in the year of our Lord one thousand eight hundred and thirty-seven, between David M'Caleb, Jr., of the county of Warren and State of Mississippi, of the first part, William Lambeth and William Thompson, merchants trading in partnership under the firm and style of Lambeth and Thompson, of New Orleans, Louisiana, of the second part, and John M. Chilton and William C. Smedes, of the county of Warren and State of Mississippi, of the third and last part, —: Whereas the said David M'Caleb, Jr., is justly indebted to the said Lambeth and Thompson in the sum of twenty-five thousand eight hundred and seventy-six dollars and forty-seven cents, secured and payable as follows, to wit: $7,906.70 by a note drawn by said M'Caleb, bearing date July 13th, 1837, payable at the Union Bank, Louisiana, New Orleans, twelve months after date, to the order of Lambeth and Thompson; eight thousand six hundred and twenty-five dollars and fifty-nine cents by another note of said M'Caleb, with the same date with the former, payable at the same place, to the same order, two years after date, and
459 nine thousand three hundred and forty-four dollars and twenty-eight cents by another none of said M'Caleb's of same date and payable to the same order, at the same place, with the former, three years after date; which sums, together with all lawful interest, the said David M'Caleb, Jr., honestly desires to secure the punctual payment of. Now, this indenture witnesseth that the said David M'Caleb, Jr., for and in consideration of the premises and the further consideration of ten dollars to him in hand paid by the said John M. Chilton and the said *the said* W. C. Smedes, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents doth grant, bargain, and sell, and convey, unto the said John M. Chilton and W. C. Smede, their heirs and assigns, forever, all that tract or parcel of land lying, being, and situate in the county of Warren and State of Mississippi and described as

follows, to wit: Lot No. two, in section No. thirteen, in township No. fourteen, range No. 2 east, containing one hundred acres; lot No. one, in section No. thirteen, in township No. fourteen, range No. two east, containing one hundred and twenty acres, and one thousand acres of land, at present in the possession and occupancy of said David M'Caleb, Jr., adjoining the portions of land heretofore mentioned, which said thousand acres were deeded to David M'Caleb, Jr., by Alexander M'Cullough and said David M'Caleb by deed recorded in the recording office of Warren county, was conveyed to said David M'Caleb, Jr., and form parts of sections twelve, thirteen, fourteen, and fifteen, in township fourteen, range two east, and the following described and named negroes, to wit: Joe, aged 32 years; Mary Jane, 12; Amelia, 11; Austin, aged 30; Sylvia, 27; Priscilla, 9; Ben, 6; Betsy, 4; Alice, 3; Tom, aged 25; John, aged 21; Jack, aged 19; Seymore, 19; Cupid, 18; Will, aged 60; Bailey, 50; Amy, 11; Anna, aged 35; Esther, aged 10; Caroline, 8; Field, 12; Betsy, 4; Rhody, 28; Priscilla, 8; Thadious, 12; Maria, 36; Lilly, 15; Rose, 14; Elisa, 10; Anthony, 2; Vina, aged 33; Caroline, 18; Jack, aged 12; Elizabeth, aged 7; Noah, aged 1; Hannah, 50; Eliza, 18; Mahala, 18; Polly, 17; Mary Jane, 17; Judy, 10; Winney, aged 18, together with all and singular the premises and appurtenances. And the said David M'Caleb, Jr., shall, and will for himself, his heirs, &c., forever warrant and defend unto the said John M. Chilton and W. C. Smedes, and their heirs and assigns, a good and sufficient title to the aforesaid land and negroes, free from any and all claims whatever, upon trust, nevertheless, that the said John M. Chilton and W. C. Smedes shall permit the said David M'Caleb, Jr., to retain quiet and peaceable possession of the aforesaid land and negroes and appropriate the profits thereof to his own use until default be made in the payment of the sum or sums of money aforesaid, or some part thereof, and then, on such failure to pay punctually the whole or any part thereof, that the said John M. Chilton and W. C. Smedes shall, and will, when requested by either of the other parties hereto, or the assigns or representatives of either, or the lawful holder of either or any of said notes, proceed to sell to the highest bidder, at public auction, for ready money, the aforesaid land and negroes, or so much thereof as may be sufficient, having advertised in a newspaper published in Warren county thirty days' notice of the times and place of such sale, and from the proceeds thereof, after defraying the expenses of this trust, pay to the said Lambeth & Thompson, their representatives or assigns, or the holder of said notes, the aforesaid sums of money, or so much thereof as may be due and unpaid, and in like manner proceeding to sell for cash, as any other sum may become due and be unpaid in the whole or in part, and, after the purposes of this trust have been fully accomplished, pay the balance, if any, to the said David M'Caleb, Jr., his heirs or assigns; but if the said David M'Caleb, Jr., shall pay and discharge the sums aforesaid as they become due and payable then this conveyance to become null and void.

In witness whereof the said David M'Caleb, Jr., and the said

John M. Chilton and W. C. Smedes have hereto set their hands and seals the year and day first above written.

J. M'CALEB, JR. [SEAL.]
JOHN M. CHILTON. [SEAL.]
W. C. SMEDES. [SEAL.]

STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before me, the undersigned, a justice
463 of the peace in and for said county, David M'Caleb, Jr., and W. C. Smedes, who ackno-ledged that they signed, sealed, and delivered the foregoing instrument of conveyance, on the day of the date thereof, as there act and deed, for the purposes therein contained.

Given under my hand and seal this 15th day of July, 1837.

WM. EVERETT, *J. P.* [SEAL.]

THE STATE OF MISSISSIPPI, *Warren County,* } *ss:*

I, Eldridge G. Walker, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were filed for record in my office on the 17th of July, 1837, whereupon I have made the same of record in book K, pages 125 and 126.

Given under my hand and seal of office this 14th day of August, A. D. 1837.

E. G. WALKER, *Clerk,*
[SEAL.] By CH'L L. BONYER, *D'y Clk.*

THE STATE OF MISSISSIPPI, *Warren County:*

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify that the foregoing deed of trust and certificate have been correctly copied from book "K," pages 125 & 126, of the record of deeds in my office.

Given under my hand & seal of office this 12th day of June, A. D. 1846.

A. H. ROWLETT, *Clk.*

464 EXHIBIT No. 2 to Ans. of J. E. Davis.

Know all men by these presents that I, Joseph E. Davis, of the State of Mississippi and county of Warren, for and in consideration of the love and affection for my daughter, Florida McCaleb, of the State and county aforesaid, have given, granted, conveyed, and delivered, and by these presents do give, grant, and convey, unto my said daughter Florida the following negro slaves, to wit: Charles, aged about 32 years; Steven, aged about 29 years; Cash, aged about twenty-five years; Aleck, aged about fourteen years; Jude, aged about thirty-five years; Louise, aged about twenty-five years, and Sophy, aged about forty-five years; to have and to hold the aforesaid negro slaves as her separate property and for her sole use and benefit, free from the claim or claims of my heirs, executors, administrators, and of all and every person whatever.

In testimony whereof I have hereunto set my hand [and] seal this eighteenth day of April, in the year of our lord one thousand eight hundred and forty-six.

J. E. DAVIS. [SEAL.]

465 Signed, sealed, and delivered in presence of—
F. E. ROBINS.
K. H. DAVIS.
L. D. HOWELL.

STATE OF MISSISSIPPI, *ss:*

Personally appeared before me, the undersigned, one of the judges of the high court of errors and appeals in and for said State, the within-named Joseph E. Davis, who ackno-ledged that he signed, sealed, and delivered the foregoing deed on the day and year therein mentioned as his act and deed.

Given under my hand and seal this 19th day of January, 1848.

W. L. SHARKEY. [SEAL.]

THE STATE OF MISSISSIPPI, *Warren County:*

I, Edward B. Scarbrough, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were filed in my office for record on the 20th day of January, A. D. 1848; whereupon I have made the same of record in book V, page 208.

Given under my hand and seal of office this 20th day of January, A. D. 1848.

E. B. SCARBROUGH, *Clk.*

466 Exhibit No. 2, annexed to answer of Joseph E. Davis. Filed with J. E. D.s' answer March 11, 48.

L. V. DAIXON, *D. C.*

EXHIBIT No. 3 to answer of J. E. Davis.

This indenture, made and entered into this seventh day of May, in the year of our Lord one thousand eight hundred and forty-six, between David M'Caleb, junior, and Florida M'Caleb, his wife, of Warren county, State of Mississippi, of the first part, George W. M'Elrath, of the said county and State, of the second part, and William Laughlin and Charles J. Searles, of the county and State aforesaid, and Edmund C. Laughlin, of the city of New Orleans and State of Louisiana, merchants and partners under the name and style of Laughlin, Searles & Co., of the third and last part — :

Whereas the said Laughlin, Searles & Co. have endorsed a certain draft drawn by the said David M'Caleb, junior, on William Laughlin and Company and accepted by them, bearing date the twenty-third day of March, in the year of our Lord one thousand eight hundred and forty-six, payable seven months after the date thereof,

to wit, on the twenty-sixth day of October, in the year eighteen
467 hundred and forty-six, for the sum of three thousand two hundred and one dollars and sixty-one cents; and whereas, also, the said David M'Caleb, junior, is indebted to the said Laughlin,

Searles and Company in the sum of one thousand dollars, evidenced by the note of the said David M'Caleb, junior, in favour of the said Laughlin, Searles and Company, bearing date the first day of May, in the year eighteen hundred and forty-six, and payable on the fifteenth day of November, in the year aforesaid, at the Bank of Louisiana, in the city of New Orleans; and whereas the said David M'Caleb, junior, is desirous to save harmless and indemnify the said Laughlin, Searles and Company from any loss or damage they may sustain by the endorsement of the draft aforesaid and also to secure the punctual payment of the said note for one thousand dollars:

Now, this indenture witnesseth—

That the said parties of the first part, for and in consideration of the premises and the further consideration of ten dollars to them in hand paid by the said party of the second part, the receipt
468 whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do hereby grant, bargain, sell, and convey, unto the said party of the second part, his heirs, executors, administrators, and assigns, forever, all that certain tract or parcel of land lying in the county of Warren and State of Mississippi, known and described as follows, to wit: Lot number two, in section thirteen, and lot number one, in section thirteen, all in township fourteen, range two east, containing together about two hundred and twenty acres; also the tract of land at present possessed by said McCaleb and adjoining the two lots of land above described, containing about one thousand acres, being the same land heretofore purchased by David M'Caleb, and by him conveyed to David M'Caleb, junior, by deed of conveyance duly recorded in the office of the probate clerk of Warren county, and here expressly referred to for greater certainty, and moreover known and described as parts of sections twelve, thirteen, fourteen, and fifteen, in township four-
469 teen, range two east; also the following-described negro slaves, to wit: Joe, aged thirty-nine years; Mary Jane, aged twenty-one years; Amelia, aged twenty years; Austin, aged forty-one years; Sylvia, aged thirty-six years; Priscilla, aged eighteen years; Ben, aged fifteen years; Betsy, aged twelve years; Alice, aged twelve years; Tom, aged thirty-four years; John, aged thirty years; Jacob, aged twenty-eight years; Cupid, aged twenty-nine years; Will, aged sixty-nine years; Bailey, aged fifty-nine years; George, aged forty-four years; Esther, aged nineteen years; Caroline, aged seventeen years; Field, aged twenty-one years; Betsy, aged thirteen years; Rhody, aged thirty-seven years; Priscilla, aged seventeen years; Thad, aged eleven years; Mariah, aged forty-four years; Lilly, aged twenty-four years; Ben, aged twenty-three years; Henry, aged seven years; Eliza, aged nineteen years; Anthony, aged eleven years; Rina, aged forty-two years; Caroline, aged twenty-seven years; Jack, aged twenty-one years; Elizabeth, aged sixteen years; Noah, aged ten years; Hannah, aged fifty-nine years; Eliza, aged twenty-seven years; Mahala, aged twenty-seven years; Polly, aged twenty-
470 six years; Mary Jane, aged twenty-six years; Judy, aged nineteen years; Winney, [aged] twenty-seven years; Charles, aged thirty-five years; Steven, aged thirty years; Cash, aged twenty-

five years; Judy, aged thirty-three years; Louisa, aged twenty-three years; Bob, aged twenty years; Alick, aged fifteen years, and Sophy, aged forty years, together with all and singular the increase of said slaves; also all the horses and mules, cattle, hogs, farming utensils, and other property attached to and belonging to said plantation and negroes, and necessary for the cultivation and maintenance thereof; to have and to hold the aforesaid described real and personal estate unto the said party of the second part, his heirs, executors, administrators, and assigns, forever, in trust, nevertheless, for the uses and purposes following—that is to say: That the said party of the second part shall permit the said party of the first part to retain quiet and peaceable possession of the aforesaid real and personal property, and appropriate the profits thereof to their own use until default be made by the said David M'Caleb, Jr., in the
471 payment of the draft aforesaid endorsed by the said Laughlin, Searles and Company, or some part thereof; and then, on such failure to punctual-y — the said draft, or any part thereof, that the said party of the second part shall and will, when thereto requested by the said Laughlin, Searles and Company, or their assigns or representatives, proceed to sell to the highest bidder at public auction, for ready money, the aforesaid real and personal property, or so much thereof as may be sufficient, having advertised in a newspaper published in the city of Vicksburg, in Warren county aforesaid, thirty days' notice of the time and place of such sale, and from the proceeds thereof, after defraying the expenses of this trust, pay to the said Laughlin, Searles and Company, their representatives or assigns, the amount of said draft endorsed as aforesaid by the said Laughlin, Searles and Company, and all lawful interest, and also the aforesaid sum of one thousand dollars evidenced by the note heretofore described, or so much of each of said amounts as
472 may be due and unpaid by the said David McCaleb, junior; and should the draft aforesaid be paid and taken up at maturity by the said David McCaleb, junior, then the said real and personal property to remain in possession of the said parties of the first part until default in the payment of the note be made—that is to say, the note aforesaid for one thousand dollars; and then in such failure to proceed to sell in manner and form as hereinbefore declared the aforesaid real and personal property, or so much thereof as may be sufficient, having given thirty days' notice as aforesaid, and from the proceeds thereof, after defraying the expenses of this trust pay to the said Laughlin, Searles and Company, their representatives or assigns, the aforesaid sum of money and all lawful interest, or so much thereof as may be due and unpaid, and after the purposes of this trust have been fully accomplished pay the balance, if any, to the said parties of the first part, their heirs, executors, administrators, or assigns, but if the said party of the first part, David McCaleb,
473 junior, shall pay and discharge the sums aforesaid as they become due and payable, then this conveyance to become null and void.

It witness whereof the said parties of the first part and said par-

ties of the second part have hereunto set their hands and seals this day and year first above written.

D. McCALEB, JR. [SEAL.]
F. McCALEB. [SEAL.]
J. W. McELRATH. [SEAL.]

The words "and lot number one in section thirteen," interlined in the 42 line of the first page, "in township fourteen," in 6th line of the second page, and "Alick, aged fifteen years, and" in 31st line of 2nd page, were all interlined before the signing of this instrument.

THE STATE OF MISSISSIPPI, *Warren County:*

Personally appeared before the undersigned, a justice of the peace in and for said county, David McCaleb, junior, and Florida McCaled, his wife, and George W. McElrath, parties to the foregoing deed of trust, who acknowledged that they signed, sealed, and delivered the same on the day and year therein mentioned as their act
474 and deed, and the said Florida, wife of the said David McCaleb, junior, being by me privately examined separate and apart from her husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed freely without any fear, threats, or compulsion of her husband.

Given under my hand and seal this seventh day of May, A. D, 1846.

JOHN CRAWFORD, *J. P.* [SEAL.]

STATE OF MISSISSIPPI, *Warren County,* } *ss:*

I, Alfred H. Rowlett, clerk of the probate court of said county, do hereby certify that the foregoing deed and certificate were filed for record in my office on the 13th day of May, 1846; whereupon I have made the same of record in book U, page- 245, 246, & 247.

Given under my hand and seal of office this 20th day of May, A. D. 1846.

A. H. ROWLETT, *Clerk.*

475 For value rec'd we hereby assign all our right, title, and interest in and to the foregoing deed of trust, and the claim secured thereby, to Joseph E. Davis, hereby substituting said Joseph E. Davis to all the rights and remedies by virtue of said deed of trust created or existing.

Witness our hands and seals this 15th day of June, 1846.

WM. LAUGHLIN. [SEAL.]
CHARLES E. SEARLES. [SEAL.]
EDM'D C. LAUGHLIN. [SEAL.]

Witness:
JAS. E. DUNHAM.

Endorsed: Exhibit No. 3, annexed to answer of Joseph E. Davis. Filed with J. E. D.'s answer March 11, '48. L. V. Dixon, D. C.

(And in minute book "M," on page 134, there appears the following order:)

A. M. PAYNE *et al.*
v.
JOSEPH E. DAVIS. } 4056.

WEDNESDAY, *June 7th, A. D.* 1848.

Upon motion of the complainant-, by counsel, it is ordered that the defendant, Joseph E. Davis, do, within thirty days after service of a copy of this order upon him, pay into this court, to the clerk thereof, nine thousand two hundred and thirty $\frac{46}{100}$ dollars, with legal interest thereon from the 15th day of June, A. D. 1846,
476 until paid, being a portion of the proceeds of the deed of trust set forth in the pleadings in the cause, which sum, when so paid, is to be delivered to John I. Guion, trustee under said deed of trust, to be by him distributed *pro rata* according to the provisions of said deed of trust.

(And on page 393 of minute book "M" the following appears:)

A. M. PAYNE *et al.*
v.
JOS. E. DAVIS *et al.* } 4056.

TUESDAY, *July 3d, A. D.* 1849.

Upon motion of complainants, by counsel, it is ordered that the rule taken against the defendant, Joseph E. Davis, at a former term of this court, be, and the same is hereby, discharged, the same having been complied with.

477 In the Superior Court of Chancery of the State of Mississippi.

A. M. PAYNE *et al.*
vs.
JOSEPH E. DAVIS *et al.* } 4056.

Interrogatories to be propounded to James Simmons, a witness on the part of complainant, the answers to which are to be read in evidence on the trial of the above-stated cause in the superior court of chancery of the State of Mississippi.

Int. 1. Are you acquainted with Joseph E. Davis and Florida A. M'Caleb, of Warren county, and were you acquainted with David M'Caleb, Jr., of said county, in his lifetime?

Int. 2. When did you first become acquainted with David M'Caleb and his wife, Florida, and how long have you known them?

Int. 3. Where did you reside and where did they reside when you first became acquainted with them?

Int. 4. Were you or not frequently on said M'Caleb's plantation in the years 1836, 1837, & 1838?

Int. 5. Were you or not well acquainted with the slaves on said

M'Caleb's plantation during the years above stated and since
478 that time? If yea, state up to what time.

Int. 6. Did you or not in either of the above-stated years and since that time know the following-named slaves on his, said M'Caleb's, plantation, to wit, Charles, Steven, Cash, Alick, Sophy, Judy, Louise, George, and Bob? If yea, state when you first saw them there, what were their ages and descriptions at that time, and when you last saw them on said plantation.

Int. 7. Do you know how said M'Caleb acquired said slaves? If you do, please state how.

Int. 8. Do you know whether said M'Caleb claimed said slaves or any of them as his property, and exercised acts of ownership over them or any of them? If you know, state the fact, and when and how long he exercised such acts of ownership.

Int. 9. Do you know what was the value of each of said slaves on the 15th day of June, 1846, and what is the value of each of
479 the said slaves at the present time? State their value as nearly as you can from your knowledge of them.

Int. 10. Do you know anything more that will be of service to the complainants in this cause? If you do, please state it as fully as if you were specially interrogated thereto.

GUION & BAINE,
Sol's for Compl'ts.

We agree that the deposition of James Simmons taken in answer to the foregoing interrogatories and the cross-interrogatories of the defendants may be read without further notice of the time and place of taking the same, and without any commission therefor, subject to the same legal objections as if taken in the usual mode on notice.

GUION & BAINE,
Sol's for Compl'ts.
HORATIO J. HARRIS,
For Davis.

Cross-interrogatories:

1st. If you answer the 8th interrogatory in the affirmative, please specify what those acts of ownership were and on what
480 grounds the said M'Caleb claimed the said slaves as his property.

2d. Do you know who was the owner of said slaves prior to the time you found them under M'Caleb's control, and if Joseph E. Davis was the owner at such time? State, if you know, whether there was any gift, sale, or conveyance of said slaves by or from said Davis to said M'Caleb and his wife, or to either of them.

In Superior Court of Chancery of the State of Mississippi.

A. M. PAYNE *et al.*
vs.
JOSEPH E. DAVIS *et al.* } 4056.

The deposition of James Simmons, taken before N. M. Dougall, a commissioner in chancery in and for Claiborne county, Mississippi, at the Bradywine Springs, in said county, on the 29th day of August, 1848, to be read in evidence on the trial of the above-stated case, wherein A. M. Payne *et al.* are complainants and Joseph E. Davis *et al.* are defendants, on behalf of complainants.

481 JAMES SIMMONS, being first duly sworn to make true answers to the annexed interrogatories, deposes and says:

Answer to first interrogatory. I am acquainted with Joseph E Davis and Florida A. M'Caleb, of Warren county, and I was acquainted [with] David M'Caleb, Jr., in his lifetime.

Answer second. I have been acquainted with them since 1833 or 1834.

Answer third. I resided in Claiborne county when I first became acquainted with them, and in 1837 I removed to Warren county, and resided on a plantation belonging to the estate of V. C. Ray, which was about one and a half miles from the plantation of David M'Caleb, jun'r, where he and his wife resided and continued to reside up to the demise of said M'Caleb.

Answer to 4th Int. I was not on the plantation of David M'Caleb at all in 1836, but during the years 1837 and 1838 I was frequently on his plantation.

Answer to 5th Int. I was acquainted with the slaves on said M'Caleb's plantation during the years 1837 & 1838 and since that time up to the spring of 1846.

482 Answer to 6th Interr'y. I knew the following-named negro slaves, to wit: Charles, Steven, Cash, Sophy, and Bob, during the years 1837 & 1838, and have known them since that time up to the spring of 1846. I knew a negro slave called Louisa, and so far as I know may have been called Judy Louisa. I do not recollect seeing Alick or George during either of the years 1837 or 1838, but I knew them both in the year 1839. All the said slaves were upon the plantation of said M'Caleb during the time I knew them. In 1837, I suppose, Charles was about 30 years old; he was black and about five feet six or seven inches high. Steven was about 25 or 26 years old, light complexion, or copper color, five feet eight or nine inches high. Cash was about 17 or 18 years old, black complexion, and about five feet three or four inches high. Sophy at that time was about 40 years old, black complexion, about five feet high. Bob at that time was about ten years old, yellow complexion, and about four feet high. Louisa at that time was about 15 or 16 years
483 old, yellow complexion, and about five feet high. In 1839 Allick was about 27 or 28 years old, black complexion, and about five feet eight or nine inches high. George at that time was

about 45 years old, black complexion, five feet seven or eight inches high. None of the said negroes underwent any change except in their ages and growth as far as I know.

Answer to 7th Int. I do not.

Answer to 8th Int. I know that during the time I was acquainted with said slaves said M'Caleb had possession of all of them, and exercised acts of ownership over them, and during that time I knew of no other person than the said McCaleb exercising acts of ownership over them.

Answer to Int. 9th. I suppose about or on 15 June, 1846, Charles was worth about 650 or 700 dollars; Cash was worth about 650 or 700 dollars; Steven was worth about 650 or 700 dollars; Allick was worth about 650 or 700 dollars; Sophy was worth about 400 dollars; Louisa was worth about 800 dollars; George was worth about 450 or 500 dollars; Bob was worth about 900 dollars, provided all the said negroes are sound, which was the case as far as I know. Can-
484 not pretend to say what said slaves are worth at this time.

Answer to Int. 10th. I know of nothing more on the subject than what I have stated.

Cross-interrogatories:

Answer to first cross-int. He had the control of said slaves; worked them on his plantation; employed overseers to superintend said negroes, and shipped the cotton as his, and to the best of my knowledge and belief received the money for said cotton.

Answer to second cross-int. I do not know who was the owner of said slaves prior to the time I found them under M'Caleb's control; I do not know whether Davis was ever the owner of said slaves, or whether he at any time made a conveyance, gift, or sale to said M'Caleb and his wife, or to either of them; and further this deponent says not.

JAMES SIMMONS.

Sworn to and subscribed before me 29 August, 1848.

N. M'DOUGALL, *Com'r.*

485 I, Nicholas M'Dougall, a commissioner in chancery in and for Claiborne county, Mississippi, do hereby certify that the foregoing deposition of James Simmons was taken before me at the time and place in the caption named; that the said deponent subscribed his name thereto in my presence and swore to the same before me.

In testimony whereof I have hereunto subscribed my name and affixed my seal this 24th day of August, A. D. 1848.

N. M'DOUGALL, *Com'r.* [SEAL.]

Commissioner's fee for traveling 21 miles to Brandywine Springs, taking the foregoing deposition of James Simmons, and returning to Port Gibson, 2 days, $10.00.

N. M'DOUGALL.

Endorsed: Depositions. Filed Sept. 2, '48. L. V. Dixon, D. C.

PAYNE & GREEN *et al.*
vs.
JOSEPH E. DAVIS and Others. } 4056.

Set the cause for final hearing on the pleadings & proofs.
Aug. 15, 1849.

BAINE & POTTER.

486 PAYNE & GREEN *et al.*
vs.
JOSEPH E. DAVIS. } 4056.

In the answers of Joseph E. Davis and Mrs. Florid- M'Caleb they claim certain slaves mentioned in the trust deed of David M'Caleb, Jr., to George W. M'Elrath as being the separate property of Mrs. Florida M'Caleb. The questions submitted is whether these slaves were the property of David M'Caleb, Jr., or whether they were the separate property of his wife, Mrs. Florid- M'Caleb. In the deposition of James Simmons it is stated that he knew the negroes from 1837 to 1839. All of them were on the plantation of David M'Caleb, Jr., during the time he knew them, and that [he] knew of no other persons having exercised acts of ownership over them. It seems that Mrs. Florid- M'Caleb was the daughter of Joseph E. Davis and wife of David M'Caleb, Jr. On the 18th of April, 1846, Joseph E. Davis executed a deed of gift of the slaves in controversy to Mrs. Florida M'Caleb, conveying them to her as of her separate property. It is not in proof to whom the slaves originally belonged, but assuming that they belonged to Joseph E. Davis before the
487 marriage of M'Caleb to his daughter, his allowing them to go to her on the marriage and to remain with M'Caleb for the time and under the circumstances mentioned, they would in law be considered as a marriage advance. If there were then any adverse reservations of title made or separate use for Mrs. M'Caleb declared the testimony does not show it.

It is true the answers set up such separate use, but it is new and affirmative matter and no proof taken on the subject. It thus appears that the property was the property of David M'Caleb, Jr., and, as such subject to the payment of his debts. It is true that by the act of 1839 this rule has been altered, but it is my opinion that the bill of sale mentioned did not make the slaves less the property of M'Caleb or free them from a full liability to pay his debts. From the brief of complainant's counsel this is the only point submit-ed. Let a decree be made conformably to this opinion.

S. COCKE.

The foregoing endorsed: 4056. Opinion to Dec'r term.

488 And in minute book "N," on page 339, appears the following order:

PAYNE & GREEN *et al.* }
vs. } 4066.
JOSEPH E. DAVIS *et al.* }

WEDNESDAY, *December 11th, A. D.* 1850.

This cause coming on to be heard on the bill, answer, exhibits, and proofs, before his honor, the chancellor, it is ordered, adjudged, and decreed that the following-named slaves, to wit, Charles, Steven, Cash, Alick, Jude, Louisa or Louise, and Sophy, claimed by Florida A. M'Caleb, wife of David M'Caleb, Jr., one of the defendants, as her separate property, and as not being subject to the debts of her said husband, are not the separate property of said Florida A. M'Caleb, but were at the time of filing the bill in this case, and at the date of the execution of the deed of trust by said M'Caleb and wife to George W. M'Elrath, for the benefit of Laughlin, Searles & Co., the property of said David M'Caleb, Jr., and subject to the payment of his debts It is further ordered that it be refer-ed to L. V. Dixon,
a commissioner of this court, to ascertain the value of said
489 slaves, on or about the 15 day of June, 1846, and that he report the same without delay to this court. All other matters affecting the rights of the parties are reserved until the coming in of said report.

Ordered, adjudged, and decreed by the Honorable Steven Cocke, chancellor of the State of Mississippi, this 11th day of December, A. D. 1850.

The foregoing decree was ordered as per following, found on page 303 of the minute book "N."

Decree Ordered.

TUESDAY, *December 3rd, A. D.* 1850.

PAYNE & GREEN *et al.* }
vs. } 4056.
Jos. E. DAVIS *et al.* }

In the Superior Court of Chancery, at Jackson.

PAYNE*d* & GREEN *et al.* }
vs. } 4056.
Jos. E. DAVIS *et al.* }

This cause having been referred to the undersigned, commissioner of said court, to ascertain and report the value of the slaves, Steven, Cash, Aleck, Jude, Louise or Louisa, and Sophy, named in the pleadings of said cause, would respectfully report that, in pursuance of
said refference, he proceeded to give the proper notice to the
490 solicitors of the parties complainan- and defendant that he would, on the day of the date hereof, state the result of his investigations by way of report to the said court upon such testimony as

might be adduced. The parties failing to bring forward testimony — than that heretofore filed in this cause, your commissioner proceeds now to state the value of said slaves on the 15th day of June, 1846, as ascertained from such proofs, as follows:

The slave	Steven	was *the* worth the sum of	$675 00
"	"	Cash	675 00
"	"	Alec	675 00
"	"	Sophy	400 00
"	"	Louisa	800 00
"	"	Charles	675 00
			$3,900 00

Showing an aggregate value of said slaves on or about the 15th of June, 1846, of three thousand nine hundred dollars. All of which is respectfully submitted.

January 8th, 1851.

L. V. DIXON,
Commissioner.

Endorsed: 4056. Commissioner's report on refference. Filed Jan. 8, 1851. Russell, D. C. Com'r's fee, $5.00.

491 And on page 364 of minute book "N" there appears the following final decree, to wit:

A. M. PAYNE *et al.* } 4056.
vs.
J. E. DAVIS *et al.* }

WEDNESDAY, *January 8th*, A. D. 1851.

The commissioner appointed to ascertain and report the value of the slaves named in the pleadings having reported, and said report being filed, and no exception taken thereto, it is ordered that said report be, and the same is hereby, confirmed in all things; and, this cause coming on to be finally heard at the term aforesaid of the court aforesaid upon the bill, answers, exhibits, proofs, and interlocutory decree, and report of the commissioner thereon, and it appearing to the satisfaction of the chancellor that the defendants, Wm. Laughlin & Co., have a separate and distinct security for their claim against David M'Caleb by a deed of trust upon property not embraced in the deed of trust in favor of complainants of sufficient value to pay and satisfy their claim against said M'Caleb;

492 and it further appearing that at the sale of the property of said M'Caleb, on the 15 day of June, 1846, under the deed of trust to John M. Chilton and Charles J. Searles, that said Joseph E. Davis bid for said property the sum of $28,434.06, leaving a surplus of $12,785.32, after discharging and paying off said deed of trust, of which balance or surplus the said Joseph E. Davis under an order of this court has heretofore paid said complainants the sum of $9,232.40; and it further appearing to the satisfaction of the chancellor

that the complainants are entitled by virtue of their deed of trust to the balance of said surplus, amounting to $3,552.76, with interest at the rate of six percentum per annum from the said 15th day of June, 1846, it is ordered, adjudged, and decreed, and the chancellor does hereby order, adjudge, and decree that the said Joseph E. Davis pay to the said complainants the sum of $4,526.61, and upon payment by the said Davis to complainants of the amount of this decree said
493 Davis shall be substituted to, and invested with all the rights of, Wm. Laughlin and Charles J. Searles under the deed of trust dated May 7, 1846, from David M'Caleb and wife to George W. M'Elrath, and that they have an execution of *fieri facias* therefor, and that said Joseph E. Davis pay the costs of this suit.

A. M. PAYNE *et al.*
vs.
JOSEPH E. DAVIS. } 4056.

On final decree.

In this case suspend the execution for complainants' money until farther ordered.

Jan'y 18, 1851.

JOHN I. GUION,
For Himself & Other Com'l'ts.

To the clerk of the superior court of chancery.

The foregoing endorsed: 4056. Order for suspension of execution. Filed Jan'y 18, 1851. Russell.

The whole record endorsed as follows, to wit: "In chancery. Octo. term, 1847. Payne & Green *et al. vs.* Joseph E. Davis *et al.* (O. bill.) Filed with Exhibits A, B, C, D, G, & H, and s'p'a issued June 23, '47. L. V. Dixon, D. C.

494 STATE OF MISSISSIPPI:

Supreme Court.

I, Oliver Clifton, clerk of the supreme court of Mississippi and *ex officio* custodian of the records of the late superior court of chancery of the State of Mississippi, do hereby certify that the foregoing is a true and correct copy of the record in said chancery court of the cause of A. M. Payne *et al. vs.* Joseph E. Davis *et al.*, No. 4056, as fully and completely as the same appears from the transcript on file and of record in my office. (The page referred [to] as containing the decree *pro confesso*, as stated on page 31 of this transcript in note by clerk, has been torn from said minute book and cannot be found.)

Witness my hand and the seal of said supreme court at office, at Jackson, this October 19th, A. D. 1882.

[Seal Supreme Court State of Mississippi.]

OLIVER CLIFTON, *Clerk*,
By C. C. CAMPBELL, *D. C.*

Fees for this record, $37.50; paid by def't Mitchell.

495 And on the 7th day of November, A. D. 1882, the same being a day of a regular term of said court, an order was made and entered of record upon the minutes of said court in the words and figures following, to wit:

496 FLORIDA LAUGHLIN
vs.
JOE D. MITCHELL. } 314. Equity.

"This cause came on this day to be heard, and the complainant offered and read in evidence the depositions of T. C. Bedford, E. D. Farrar, Mrs. Julia Porterfield, Jefferson Davis, Mrs. Varina Davis, W. W. Lord, Jacob W. Payne, E. C. Laughlin, Mrs. Florida Laughlin, E. C. Laughlin, Jr., Jeff. D. Laughlin, Louisa Neil, Thomas Rigby, G. W. McElrath, & Chas. Winkley, and the defendant offered and read in evidence the depositions of S. S. Booth, J. H. D. Bowmar, Mary E. Hamer, Samuel Morrow, and Mrs. Lucy Mitchell, being all the depositions taken and filed in said cause, as well as the exhibits filed with said depositions; and the defendant also introduced and read in evidence the transcript of the proceedings had in the chancery court of the State of Mississippi in the cause of Payne & Green *et al. vs.* Joseph E. Davis *et al.*, and the cause, being submitted, was by the court taken under advisement."

J. M. McKEE, *Clerk.*

497 And afterwards, to wit, on the 23rd day of November, A. D. 1882, the same being a day of the regular November term, A. D. 1882, of said court, a final decree in said cause was rendered and entered of record upon the minutes of said court in the words and figures following, to wit:

498 FLORIDA LAUGHLIN
vs.
JOSEPH D. MITCHELL. } In Equity.

This cause came on for final hearing on the bill, answer, exhibits, & proofs, and was argued by counsel for the respective parties. The court being now sufficiently advised in the premises and being of opinion that the complainant is not entitled to relief concerning the matters mentioned in her bill:

It is now ordered, adjudged, and decreed that the relief prayed in the bill be denied and that said bill be dismissed.

It is further adjudged and decreed that the complainant and W. B. Pittman, Murry F. Smith, & A. B. Pittman, sureties on her cost bond, pay the costs of this cause, to be taxed, for which let execution issue as at law.

Ordered, adjudged, and decreed this 23rd day of November, A. D. 1882.

R. A. HILL, *Judge.*

499 And on said 23rd day of November, A. D. 1882, the following order was made by said court in said cause and en-

tered of record on the minutes of said court in the words & figures following, to wit:

FLORIDA LAUGHLIN *v.* J. D. MITCHELL.

Ordered, That complainant have leave, on or before the 4th Monday of January next, to apply for a reargument in this cause, if so desired.

Ordered this 23rd day of Nov., 1882.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 29th day of November, A. D., 1882, the same being a day of the regular November term, A. D. 1882, of said court, an order granting appeal was made by said court and entered of record upon the minutes thereof in the words and figures following, to wit:

500 Circuit Court of United States for Southern District of Miss. Nov. T., 1882.

FLORIDA LAUGHLIN
vs. } 314.
JOS. D. MITCHELL.

This day the complainant appeared in open court & prayed for an appeal to the Supreme Court of the United States. It is thereupon considered & so ordered by the court that said prayer be granted, & that said appeal be allowed upon complainant entering into bond in the sum of five hundred dollars, conditioned to pay all costs of this appeal.

Ordered & decreed this Nov. 29th, 1882.

R. A. HILL, *Judge.*

And on said 29th day of November, A. D. 1882, the complainants filed in the office of the clerk of said court their appeal bond in said cause, which is in the words and figures following, to wit:

501 Know all men by these presents that we, Florida Laughlin, as principal, & Murray F. Smith, as surety, are held and firmly bound unto Jos. D. Mitchell in the full and just sum of five hundred dollars, to be paid to the said Jos. D. Mitchell, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 29th day of Nov., in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately, at a term of the circuit court of the United States for the southern dist. of Missi., in a suit depending in said court between Florida Laughlin, complainant, & Jos. D. Mitchell, defendant, a decree was rendered against the said Florida Laughlin, dismissing her bill in said suit, and the said Florida Laughlin having prayed in open court and having obtained an appeal to the next term of the Supreme Court of the United States, to be holden on the 2d Monday of October next, to reverse said decree: Now, the condition

of the above obligation is such that if the said Florida Laughlin shall prosecute her appeal to effect and answer all costs if she fail to make her plea good, then the above obligation to be void; otherwise to remain in full force & virtue.

FLORIDA LAUGHLIN, [SEAL.]
By MURRAY F. SMITH, *Att'y.*
MURRAY F. SMITH. [SEAL.]

Approved by—
R. A. HILL, *Judge.*

502 The opinion of the court, delivered on the final hearing of said cause and filed in the office of the clerk of said court on the 23rd day of November, A. D. 1882, is in the words and figures following, to wit:

503 In the Circuit Court of the United States for the Southern District of Mississippi.

FLORIDA LAUGHLIN *vs.* JOSEPH D. MITCHELL.

This cause is submitted upon bill, answer, exhibits, and proofs, from which the following undisputed facts appear:

David McCaleb, the then husband of complainant, was, in the year 1846, the owner of the land described in the bill and subject to this controversy, and was largely indebted, and before that time had executed a mortgage or trust deed to secure a debt due to a man named Jacobs, in which complainant joined, conveying to the trustees, Chilton and Searles, this tract of land, with the slaves and personal property on the same.

The trustees, having advertised the time and place of sale, proceeded, on the 15th of June, 1846, to offer the same for sale to the highest bidder for cash. There were present at the sale Johnathan McCaleb, an uncle of David McCaleb, who held a large debt against his nephew, and other creditors, or their counsel, who bid, more or less, for the property sold, but the whole of it was either struck
504 off to Joseph E. Davis, the father of complainant, or the bids were transferred to him, so that he became the purchaser, the aggregate amount of the sales being $28,531, and said Davis, so far as the creditors were concerned, continued to be the owner of the property, but David McCaleb and wife remained in possession of the property as before the sale up to McCaleb's death, which occurred about one year after the sale, and complainant remained in possession alone up to her intermarriage with E. C. Laughlin, her present husband, and complainant and her husband have remained in possession ever since. On the 27th December, 1858, Joseph E. Davis executed a lease or deed conveying said property, real and personal, to complainant for and during her natural life. This conveyance contained in it an acknowledgement that said Davis was the sole, legal, and equitable owner of the property conveyed. This conveyance was duly signed by said Davis, the complainant, and her husband and delivered to complainant, and after some five months duly acknowledged by complainant and husband and re-

corded in the proper office. Joseph E. Davis, by his last will and testament, which has been duly proven and admitted to record, devised to the defendant, Joseph D. Mitchell, the land described as
Diamond Place, then occupied by the complainant, and in
505 which she had a life estate, as declared by the will. These are undisputed facts.

The bill in substance charges that Joseph E. Davis made the purchase mentioned, as the trustee for complainant, with the understanding that the income of the property so purchased should be applied to the payment of the purchase-money, and that so soon as the same was paid to those to whom it was due, or so soon as complainant should refund to her father the sum he might have to pay to discharge the purchase-money due, he would convey to complainant all the legal and equitable title to the property, real and personal—in other words, that by said parol agreement he became her trustee, and held the property as such subject only to the incumbrance of the purchase-money bid at said sale. This allegation is denied by the answer, which raises the first question to be determined.

The bill further charges that the lease with the declaration of title in Joseph E. Davis, the lessee, executed on the 27th day of December, 1858, was procured by the threats and undue influence of said Davis and therefore null and void. This allegation is also denied by defendant in his answer and raises the second and more important question.

The prayer of the bill is to have this lease declared void and set
aside as a cloud upon complainant's title to this land, the
506 allegation of the bill being that all the purchase-money has been paid, or, if not, that an account of the balance due be taken, which complainant declares she is ready and willing to pay.

These questions will be considered in the order stated.

It is admitted that complainant's testimony as to the understanding and agreement between her and her father as to the ces-ation of the alleged trust is incompetent and cannot be considered. Aside from this testimony there is no direct evidence going to establish the alleged agreement and understanding upon which the alleged trust is based. Quite a number of witnesses testify that the general understanding in the neighborhood was that Mr. Davis had purchased the property for the benefit of his daughter, the complainant. This testimony, when given to it all the weight claimed for it, fails to establish the trust claimed, as it only goes to establish the fact that it was intended for complainant's benefit. This would be fulfilled by giving her and her family a home and a support from the proceeds for a longer or shorter time. The most direct testimony bearing upon the understanding of the parties is found in the written correspondence between them, commencing by the letter of Joseph
E. Davis to his daughter, the complainant, on the 12th Sep-
507 tember, 1849, the substance of which, so far as it relates to the question under consideration, is as follows:

"Your letter by Jim was duly received. I am sorry to find you so much under the influence of the idle gossip. The opinion of others

in such matters as relate to our moral conduct is right to respect. Such as would inquire into the private affairs of others is entitled to as much respect as is the cackling of geese, and we must feel humbled in our estimation when we would allow them to exercise an influence in our conduct or affect our happiness. But to come to the subject of your letter. I had assured you that by will I had left the Diamond Place to you, subject to the debt due upon it, which is now about $20,000, now due and payable to the house of W. Laughlin & Co.; how much more may be incurred in course of litigation I am unable to say. I certainly have not interfered in its management, except such aid as I could give it, and am surprized to hear that Mr. Laughlin felt any apprehension or hesitation from the fear that I would not approve his acts. I expected that, from his want of experience, *that* he would hesitate, and when convenient consult me for his own advantage; yet, in all matters of evident propriety, he would not wait for advice.

508 "You ask my opinion upon his return to New Orleans. I am as little able to answer as any one. I suppose his business or interest in the house to be worth more than the proceeds of the plantation. I did not know his means or the necessity of his continuance, the probable income of the house, or any other fact to enable me to form any opinion. Now, if Mr. L. has the means, and is disposed to pay the amount due upon the estate, I will or you may, as the case may be, execute a mortgage to secure him in this advance.

"I mentioned in former letter to you that, from no want of confidence in Mr. L., but from a desire to secure you against any misfortune that even the most prudent are liable to, I thought it best, both for your interest as well as his, that your property be kept separate. I still think so. I cannot understand your sensibility in the matter. Things are in precisely the same situation they have been for years past. I have interfered no further now than formerly. You, nor any one else, as far as I know, thought you could be degraded by dependence on your father. I expected Mr. Laughlin to exercise all the authority that was necessary and proper for the government of the place, and to act in all respects for your common benefit, and, so far as my wishes are concerned, prefer his re-

509 maining. The proceeds of the place will require time and economy to pay the debts, and if he could accomplish it at an earlier day by returning to New Orleans it is a sacrifice you should make for his advantage, but it would not do for you to accompany him before the season of yellow fever is over.

"I would say in conclusion that I have no interest of my own that is to be effected. The interest is yours; and as it is likely to affect you only am I influenced."

To this letter Mrs. Laughlin soon after replied, in substance, as follows:

"We both know that all you propose is for our benefit—nothing can affect that conviction—but others have imagined that you held the title from me, because you were afraid to trust him with the

management of the place. Might he not, sensitive as he is, think so, too? By economy we can pay the debt, and such economy we will exercise, but, then, he wishes your unlimited confidence. Mr. Laughlin is too noble and true-minded, too disinterested, to care whether the property was in my name or his, in any ordinary case.

"In this he has often said he would only live here in case it was secured to me, for he takes the same view of them *after* that you do, and thinks it safest to guard against misfortunes that can
510 affect others as well as ourselves. In my obscure way of writing I often mislead you with regard to myself. I am always pained to see it, but still more so when I think I have injured, in your good opinion, one so much more deserving as Edmond is."

These letters and others, and other testimony bearing on the point, I am satisfied establish the fact that Joseph E. Davis purchased the property with the purpose of letting McCaleb, his then son-in-law, and complainant remain on the plantation and control it, and the negroes and other personal property on it, with the intention of holding the legal title to all of it, and making himself personally responsible for the expenses of the plantation, but that the income should be applied to the payment of these expenses and the personal expenses of his son-in-law and daughter, and the remainder applied to the payment of the purchase-money, for which he was personally liable, and that when this was done he would convey, or secure by his will, a title to the property, whether in fee or only for life, does not very clearly appear. No complaint seems to have been made to the condition of affairs during the lifetime of McCaleb, or the widowhood of complainant, but after the intermarriage between complainant and E. C. Laughlin, which occurred about two years after the sale, and before the letter of Joseph E. Davis, of
511 of Sept. 12, 1849, and within about a year after this marriage a desire sprung up, no doubt originating with Mr. Laughlin, and in which Mrs. Laughlin sympathized, to obtain the legal title; hence the appeals of Mrs. Laughlin to obtain it. Complainant during all this time recognized the title to the property as being in her father, and that it was incumbered for the payment of the balance of the purchase-money to whomsoever it might be due. This condition of the property and title to it continued until December, 1858, when the lease referred to was executed.

The proof shews that when this instrument was executed, Mr. Davis was in bad health, and the probabilities are desired this matter settled, having, whether right or wrong, all the time regarded himself as the legal and equitable owner of the property, with full power to dispose of it as he might think proper, and did not desire to have any controversy arising out of it to be settled after his death. The proof shews that complainant was childless and likely to remain so: it further shews that he had a dislike to the children of Wm. Laughlin, who had left them orphans, and whom their uncle and complainant had taken to raise and educate, if not to Laughlin himself, and doubtless for these reasons desired to limit the title to his daughter to a life estate.

512 The proof shews that Mr. Davis sent for his daughter, and afterwards for her husband; that he had prepared the instrument called the lease, and requested complainant and her husband to sign it after he had done so, but which, when finding that it only conveyed a life estate, they signed with reluctance, and left and did not return, but took the lease with them, and were very much dissatisfied with its provisions.

On Jan. 4th, 1859, and nine days after the execution of the lease, Joseph E. Davis, in reply to a letter received from Mrs. Laughlin, wrote her as follows:

"I am sorry to receive such a letter from you, my dear child; you write as if I had deprived you of something that was yours, and speak of your being made a tenant at will. Now, it is exactly what the deed is intended to prevent. There is nothing now to prevent me putting an overseer on the place, or to prevent my executors from doing the same thing. If you think your situation is to be bettered you may return the deed. I will leave you in possession of the house and garden and appurtenances with an income.

"As to statement of account much of it has no relation to my purchase, the Guion debt, and the Jacobs debt; but you will recollect that nothing has been paid but from the proceeds of the
513 place, which is mine. I leave you in the full enjoyment of the income for life. Now, who has the right to dispose of the earnings of his labor. I very much regret any feeling of the kind, and would still more regret any publicity by taking possession of the place, or exercising authority over it, but it seems no generosity nor line of conduct is satisfactory."

The lease or deed was retained by complainant and her husband until the 31st day of May, 1859, and then by them acknowledged and put on record. Mr. Davis did not acknowledge it. The conveyance in substance conveys the property for life to complainant. Mrs. Laughlin and her husband covenant to manage the property in a husband-like manner, and at the termination of the lease to quietly surrender the same, or such part as might remain, unto said Davis, his executors, administrators, or assigns, and then follows the acknowledgment that the sole legal and equitable title and right of property was in said Joseph E. Davis.

This lease left Mrs. Laughlin in possession of the property for life, free from any obligation to pay any part of the debts of the place, or the balance of the purchase-money due, which, including the sum due Wm. Laughlin & Co., which in the fall of 1849
514 amounted to $20,000, for which Joseph E. Davis acknowledged himself bound, and it is to be presumed paid, as he was solvent, except such part as was afterwards paid from the proceeds of the plantation. To this sum must be added $4,525—recovered after that time in the Guion suit—and how much more Davis paid cannot be ascertained from the proofs submitted. An examination of the account of sales of cotton from the plantation for the year commencing Nov. 13th, 1849, to and including Nov. 27, 1850, was $4,168.63; the account of Wm. Laughlin & Co. with the Dia-

mond Place from April 1st to Nov. 15th, 1850, shews charges other than that connected with the payment of the purchase-money or anything due to said Davis of $5,893, which shows that this indebtedness was increased instead of being diminished; indeed, the account shews on Nov. 20th, 1850, a balance due Wm. Laughlin & Co. from the Diamond Place of $22,830. I am satisfied from all the proof that there continued to be a large balance due against Diamond Place, either to others to whom Mr. Davis was bound or to him at the time the lease was executed; but from an examination of all the questions presented under the pleadings and proofs I do not deem it important to examine into these accounts. The question is, Has Mrs. Laughlin shown such a title, legal or equitable, to the lands in controversy as entitles her to have the cloud upon her
515 title removed as prayed for? If not, the bill must be dismissed; but if she has the next question is, Has she shewn that the lease or instrument of December 27th, 1858, is such a cloud as a court of equity by its decree will declare void and remove?

It is not claimed that a resulting trust has been established, but that it is a trust created by a parol agreement. When the subject of the trust is real estate all the authorities hold that to establish it the evidence must be clear and satisfactory. There being no conflict as to this rule reference to the authorities is unnecessary. Applying this rule to the pleadings and proofs, I am of the opinion that the trust is not sufficiently established.

It is insisted that at the time of the sale it was understood that Davis was purchasing the property for complainant, and that on that account Jonathan M'Caleb and others present did not bid for the property, or did not bid as much as they would have otherwise done. The proof is somewhat conflicting on this point, but the weight of the testimony was that all bid who desired to do so, and that Davis complained that it was run up on him by Jonathan M'Caleb and others who held large demands against David M'Caleb.

The testimony shews that Joseph E. Davis contracted with the
516 overseer for the year 1849; this appears from his letter to E. C. Laughlin, in which he informs him of the number of bales of cotton which the overseer was to receive. As already stated, the proof shews that both parties regarded Mr. Davis as holding the legal title and the right to have the income of the plantation applied to the payment of the purchase-money bid by him at the sale and the other claims against the Diamond Place.

Complainant could not claim under these circumstances to have the title conveyed to her until all these demands were satisfied, even admitting the understanding between her and her father at the time of sale, as alleged in her bill.

I am satisfied from the proofs that this was not done at the time of the lease or deed of 1858 was executed. The parties, if competent to act and contract between themselves, if no fraud, mistake, or undue influence intervened, had a right to enter into the contract and agreement set forth in the deed or lease of 1858.

That Mrs. Laughlin is a woman of unusual intelligence, and was then with a sufficient amount of will power to contract and manage

her own affairs, is apparent from her different letters addressed to her father, and made part of the evidence, and that her husband is a man of at least ordinary intelligence is apparent from his letters and testimony. The proof shews no fraud or deception upon
517 the part of Mr. Davis. The only other charge is that of undue influence. That complainant and her husband did not get the title they desired is manifest.

The letter of Mr. Davis of Jan. 4th, 1859, is relied upon as constituting a threat that if she did not accept the terms of the lease he would dispossess her and place an overseer on the plantation.

The letter does not bear this construction. He says there is nothing now to prevent his putting an overseer on the place or to prevent his executors from doing the same thing—that is, if she returned and refused the terms of the lease. He did not say that he would dispossess her, and leaves her the option to do so, and proposes in that event that he will leave her in possession of the house, garden, and appurtenances, and will give her an income in place of the provisions of the lease. She was thus left the option to accept the one or the other or to refuse both and stand on whatever her legal or equitable rights may have been. After waiting nearly five months and deliberating upon the proposition, without any further influence upon the part of her father, as far as the evidence shews, and with ample time to consult counsel and friends, they, and not Mr. Davis, placed the lease on record, thus accepting its terms and enjoying its benefits, without any attempt to revoke it until the filing of this bill, June 25th, 1881, for a period of twenty-two years after they
518 acknowledged and recorded the deed. There is no evidence that any intimation was given to Mr. Davis of any further dissatisfaction with the terms of the lease or intention to assail it during his lifetime.

On the 18th day of March, 1869, Mr. Davis made his last will and testament, by which he devised the remainder interest in this real estate to the defendant. There having more than ten years elapsed after the lease was recorded by Mrs. Laughlin and her husband before Mr. Davis made his will, he had a right to believe he had the right and power to devise this remainder interest to whom he pleased, and for this reason, if there were no others, I am of opinion the complainant is estop-ed from having this lease or deed declared void, as being a cloud upon her title. She knew all the facts in relation to her title and in relation to the execution of the instrument during the lifetime of her father as well as since. To wait until after his death and until after the death of most of the persons who could have had any knowledge of the transactions, and after her father had by his last will disposed of his estate—and it is probable in some respects in a manner that he would not have done had he not believed that he had full power of disposition of the remainder interest in this real estate—and then defeat his will would be inequitable and unjust.

519 Many authorities have been read and commented upon by the learned counsel on both sides, who have presented the

questions involved on both sides with an ability rarely equaled, in this court at least.

But with the view I have taken of the facts of the case the rules of law are so simple and elementary that citation to authorities would but extend this opinion, already too long, without throwing any light upon the questions involved. The result is that the prayer of the bill must be denied and the cause dismissed at complainant's cost.

R. A. HILL, *Judge.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

I, James M. McKee, clerk of the circuit court of the United States for said district, do hereby certify that the above and foregoing pages contain a true, full, and perfect transcript of the record of said court in the cause lately pending therein, wherein Florida
520 Laughlin was complainant and J. D. Mitchell *et al.*, defendants, as well as the opinion of said court delivered in said cause, as fully and completely as the same now remains of record in our said court.

Given under my hand and seal of said court hereto affixed, at office, in Jackson, in said district, this 19th day of September, A. D. 1883.

[Seal U. S. Circuit Court, Southern District of Mississippi, 5th Circuit.]

JAS. M. McKEE, *Clerk.*

Endorsed on cover: S. Mississippi C. C. U. S. No. 210. Florida Laughlin, appellant, *vs.* Joseph D. Mitchell. Filed 16th November, 1883.

121-411

Supreme Court of the United States.

FLORIDA LAUGHLIN
vs.
JOS. D. MITCHELL.
No. 210.

In this case it is agreed that a formal order dismissing as to J. H. D. Bowmar and Jefferson Davis, executors of Jos. E. Davis, was entered in the circuit court of the United States for the southern district of Mississippi, when this cause was finally heard.

It is further agreed that this agreement shall be a part of the record in the above cause now pending in the Supreme Court of the United States.

MURRAY F. SMITH.
A. M. LEA.

121 41

Office Supreme Court U. S.
FILED.
MAR 28 1887
JAMES H. McKENNEY.
CLERK.

Supreme Court of the United States.

—o—

FLORIDA LAUGHLIN, Appellant,

No. 210. *vs.*

JOSEPH D. MITCHELL, Appellee.

—o—

BRIEF FOR APPELLANT BY ALFRED B. PITTMAN.

Supreme Court of the United States.

—o—

FLORIDA LAUGHLIN, Appellant,

No. 210. *vs.*

JOSEPH D. MITCHELL, Appellee.

—o—

BRIEF FOR APPELLANT BY ALFRED B. PITTMAN.

—o—

Statement.

—o—

This suit is in the nature of a bill to remove a cloud from the title of real estate. Briefly stated, D., father of complainant, bought in for her benefit, under a foreclosure sale, her husband's plantation, which was then their homestead. The sale was for cash, but the creditors had agreed to extend credit for the sum bid under the arrangement, and D. gave his notes instead of money, and took the title as security until the purchase money should be paid by his daughter out of the profits of the property. Appellant has remained in possession of the place under the arrangement from June 17th, 1846, the date of the sale, up to the present time. She had long before December 27th, 1858, paid off the entire purchase

money; yet her father, displeased by her second marriage, contracted during the interval, and influenced by the fact that she was childless, determined that her interest in the property which he held in trust for her should be converted into a life estate only. He accordingly executed a lease to her for her life, procuring her signature thereto on December 27th, 1858, under circumstances rendering it void, and devised the fee to the defendant. The bill seeks to remove the cloud by obtaining a decree against the pretentions of the defendant. This bill is set out in extenso hereinafter, pp. 1 and 16 inclusive. Also on pages one and eleven inclusive of transcript.

The defendant makes general denials, but admits most of the material allegations. A brief of the answer will be found hereinafter on page seventeen. See also transcript, page 32.

ASSIGNMENT OF ERROR.

On final hearing the lower Court dismissed appellant's bill. That decree is now assigned as error, appellant contending that she was entitled to relief as prayed.

I.

POINTS OF LAW AND OF FACT.

The *issue of fact* in this case is the ownership of the property.

The principal facts, briefly stated, by which appellant has established her ownership are as follows:

By the law of Mississippi in force at that time ten years actual possession vested in the possessor a full

and complete right and title. I quote from that law the following:

"TEN YEARS ADVERSE POSSESSION TO GIVE TITLE.

Ten years actual adverse possession by any person or persons claiming to be the owner or owners for the time aforesaid of any lands, tenements, or other real estate, uninterruptedly continued for the space of ten years, by occupancy, descent, conveyance or otherwise, in whatever way or manner such occupancy may have been commenced or continued, shall vest in every actual possessor or occupant of such lands, tenements, or other real estate, a full and complete right and title, and shall be a good and sufficient bar to all claims that may be made or action commenced, by any person or persons whatsoever, for the recovery of any such lands, tenements, or other real estate."

The Supreme Court of Mississippi has decided that this statute not only barred an action but was effectual to actually vest in the possessor a complete title upon which an action could be maintained.

See Ellis vs. Murray, 28 Miss., 129. Ford vs. Wilson, 35 Miss., 504.

Appellant's entry under the purchase was made on the 17th of June, 1846, and her possession thereunder had matured into a complete right and title before the date of the execution of said lease.

II.

The evidence by which the actual occupancy as owner is proven is as follows:—

1st. The announcement of Joseph E. Davis at the sale that he bought for her. See deposition of Louisa

Neil, post. pp. 23 and 33, and trans. pp. 116-117. See also Mrs. Laughlin's ans. to int. 5, trans. 110, *et seq.*

2d. Common repute among all the members of the family and relatives and connections, and neighbors, both as to the entry under the agreement and the occupancy pursuant thereto. See testimony of T. C. Bedford, post. pp. 21 and 33, and trans. pp. 36 and 37; G. W. McElrath, post. 21, trans. 136 and 137; Mrs. Julia Porterfield, post. 22 and 34, trans. 40 and 41; Rev. Dr. W. W. Lord, post. p. 22, trans. 62 and 63; Hon. Jefferson Davis, post. 26, trans. 46; Mrs. Jefferson Davis, post. p. 28, trans. pp. 58 and 59.

3d. The letters of Jos. E. Davis, declaring in so many words her ownership and disclaiming any personal right. See post. pp. 47-50, trans pp. 50.

4th. The letters of Mrs. Laughlin to her father which could never have been written by her if the facts had been otherwise. See p. post 50, and trans. pp. 54 and 55.

5th. The conclusive fact that Joseph E. Davis treated the debt as Mr. Laughlin's. See his letter, post. p. 47, and trans. p. 50. Letter of C. J. Searles, one of the house of Wm. Laughlin & Co., to E. C. Laughlin, stating amount of account of Diamond, pursuant to direction of Jos. E. Davis to call on Mrs. Laughlin for payment. See post. p. 44, and trans. p. 85.

6th. The equally conclusive fact that she actually paid the purchase money. See E. C. Laughlin's testimony, and accounts of Wm. Laughlin & Co., their commission merchants, post. pp. 39-40, trans. 75 et

seq.; J. U. Payne's testimony and accounts annexed thereto, p. 38, trans. p. 64 et seq.

The following items taken from these accounts will be sufficient for the purpose of this argument:

(*Transcript p.* 90).

" Dec. 6, (1847)—To paid second installment on bond to Chas. A. Jacobs, with 8-100 int. to date	$ 5,829 32

(*Transcript p.* 87).

Dec. 5, (1849—J. E. Davis dft. C. A. Jacobs, due 15th Oct. '49	$ 5,788 69	
Commissions for accepting	144 72—	5,933 41
Interest		221 52
Mar. 11.—Pd Guion's judgment vs. McCaleb		10,778 88
interest		922 28
Mar. 26.— E. C. L.. order for J. J. Green & Co		986 58
Dec. 29, (1849) J. E. Davis dft. S. L. & Co & Com.		2,050 00
		$26,721 99
Add to this first installment to Jacobs, paid by same merchants as shown by testimony of E. C. Laughlin (the acct. between Jan'y 18, 1848, and November 20, 1849, missing)		5,012 31
Add first installment of interest		551 37
Payments through Wm. Laughlin & Co		$ 32,285 67

It appears from testimony of Mrs. Varina Davis (*trans. p.* 59, ans. to 8 int.) and from testimony of Jefferson Davis (*trans. p.* 47, ans. to ints. 5, 6, 7, 8, and 9), and from J. U. Payne's testimony (*see trans. p.* 64), that the account of the Diamond plantation with Wm. Laughlin had been reduced presumably by the proceeds of the crops, to something between $10,000 and $13,000, when

they tailed, and that balance was paid by the money of Mr. Jefferson Davis, by debitting the latter to that account.

In addition to these large items the following from the accounts annexed to J. U. Payne's testimony show further payments:

Transcript p. 67).

"Mar. 30. 1852—P'd dft. favor John I. Guion.....	$2,943 41
April 20, 1852—Put to credit of J. E. Davis' ac.	2,270 57

(*Transcript p.* 68.)

"Feb'y 21, 1853.—To this am't put to credit of J. E. Davis' individual ac.....	3,795 37
July 16.—To am't put to credit J. E. Davis' ac....	2,295 92
Amount from Payne & Harrison .....$	11,305 27
Add the am't from Laughlin.....	32.285 67
And we have a total of these payments.....$	43,590 94
If the $10,000 paid by Mr. Jefferson Davis' money be deducted it leaves.....$	33.590 94

III.

The Lease made by Joseph E. Davis on December 27, 1858, conveying the property to Mrs. Laughlin for life was void.

1st. Mrs. Laughlin being in possession and actual occupancy as owner at that time, could not on that account, be estopped from asserting her own title. In such case the estoppel of a tenant as against a landlord does not apply. See post. p. 56.

2d. The object of the lease was not to *give* but *acquire.* Its purpose was to estop Mrs. Laughlin from holding in her own right. Its recital as to consideration

was false—its recital as to ownership was false, and its acknowledgment by the lessees false. Its unusual clauses and acknowledgement by lessee instead of lessor explain its purpose. See p. 56.

3d. This Lease is, in fact, a piece of documentary testimony procured by undue influence and is therefore void. Jos. E. Davis occupied toward Mrs. Laughlin the relation of *Father—Trustee—Counsellor*, and could not trade with her in respect to this property. See post. pp. 58-69.

IV.

The relief sought is not affected by lapse of time.

1st. It does not apply to a case of the actual owner, who is the actual occupant seeking to remove clouds from title.

2d. She can prove the invalidity of the lease whenever it is introduced against her. *A fortiori* she may at any time anticipate its possible use, and perpetually enjoin pretensions supported by it. Cameron vs. Lewis 59, Miss. 134. In the latter case the Court says: "The ten years' statute of limitation was pleaded by the defendants to the entire relief sought by the bill. They insist that inasmuch as more than ten years have elapsed since their mother's title was acquired it cannot now be assailed. But during the greater part of that time the complainants have been, and are now, in possession of the land; and, while they might have filed their bill at any time *quia timet*, they were not bound to do so until advised that the adverse title was about to be asserted against them. He who is out of possession

can derive no advantage from the flow of time, and he who is in possession can never be damaged by it." See also on same point post. p. 87.

3d. She could not be expected to assert its invalidity during the life-time of Jos. E. Davis, (see p. 69, 70), and not afterwards until advised of her rights.

4th. It is a case which is clearly and satisfactorily made out; the complainant was actually in possession when the lease was executed, and the documentary evidence leaves no room for opposing presumptions.

IN THE

Circuit Court of the United States,

FOR THE

Southern District of Mississippi.

—o—

FLORIDA LAUGHLIN,

vs.

JOSEPH D. MITCHELL, AND JEFFERSON DAVIS AND J. H. D. BOWMAR,

as Executors of Joseph E. Davis, Deceased.

—o—

Original Bill of Complaint.

—o—

To the Honorable, the Judges of the Circuit Court of the United States, for the Southern District of Mississippi:

Your oratrix, Florida Laughlin, who is a citizen of the State of Tennessee, exhibits this her bill against Joseph D. Mitchell, who is a citizen of the State of Mississippi, and a resident of said district.

And thereupon, your oratrix doth complain and aver as follows:

That your oratrix is the owner of a certain plantation situate in the county of Warren, and State of Mississippi, known as "Diamond Bend," and more particularly described as fol-

lows: Lots 1 and 2, in section 13, township 14, range 2, east, containing together about 220 acres, and also, parts of sections 12, 13, 14, and 15, township 14, range 2, east.

As such owner, your oratrix is in possession of said lands, and has so held the same for many years from the time and under circumstances hereinafter more particularly stated.

Your oratrix is a daughter of Joseph E. Davis, deceased, and the defendant, Joseph D. Mitchell, is his grandson. That said Joseph E. Davis, deceased, departed this life in the year 1870—leaving a last will and testament, which was duly admitted to probate in the Chancery Court of Warren county, in the State of Mississippi, a copy of which is herewith filed as an exhibit, marked "A," and prayed to be taken as part hereof.

That by the first clause of said will, said testator bequeathed and devised all of his estate, real and personal, to the defendant, Mitchell and his sister, subject to legacies and bequests hereinafter made.

That the 2d and 3d clauses of said will are as follows:

"Secondly—I give and devise to my daughter, Florida Laughlin, the estate known as the Diamond place, in said county of Warren, containing about one thousand two hundred acres, for and during her natural life, with full enjoyment of the profits and privileges thereunto belonging."

"Thirdly—I give and devise to my grandson, Joseph D. Mitchell, the plantation known as the Diamond place, in the county of Warren, containing about one thousand two hundred acres, now in possession of, and occupied by my said daughter Florida Laughlin, who has a life estate therein, with appurtenances thereunto belonging, on the death of my said daughter Florida Laughlin, to hold and enjoy the same in fee simple; but in case my grandson, J. D. Mitchell, should not survive my daughter, Florida Laughlin, and should die without issue, I give and devise said Diamond place to my nephew, Joseph E. Davis, son of Hugh R. Davis, of Wilkinson county, Mississippi.

That the defendant, Mitchell, though fully cognizant of your oratrix rights in the premises, as absolute owner in fee, of said property, and notwithstanding the same, pretends that said devise to him was valid, and is effectual to convey to him the fee in said lands.

Your oratrix further shows that her father, Joseph E. Davis, became possessed of said property only through her and as her trustee, and never did acquire or own any beneficial interest therein. The circumstances under which said trust was assumed, are as follows:

On the seventeenth day of June, 1844, your oratrix was the wife of David McCaleb, and she and her said husband were then living on said plantation which was then their homestead, and had been the property of her said husband before his intermarrige with your oratrix. On the 15th day of July, 1837, said David McCaleb, being indebted to Lambeth & Thompson, of the city of New Orleans, had executed a deed of trust to secure his indebtedness, which was recorded in the county of Warren, in Book K, p. 125. This debt, or the balance due thereon, amounting to $13,955 80, had been assigned to one Charles A. Jacobs, and said David McCaleb and your oratrix executed a new deed of trust to secure the payment of said balance to said Charles A. Jacobs, on the said 7th day of June, 1844, whereby they conveyed unto one John M. Chilton and one Charles J. Searles, as trustees. all of said land, and in addition thereto, some forty-two slaves and their increase, before and since the date of the execution of the previous deed above mentioned, and all their future increase, and all the horses, mules, cattle, hogs, and farmings utensils, and other personalty thereon. By said deed of trust, terms were granted by which said McCaleb should be permitted to pay his said debt in four equal annual instalments, with interest at eight per centum per annum.

Your oratrix further shows unto your honors, that on the 7th day of May, 1846, said David McCaleb, executed another deed of trust, whereby they conveyed the same

real and personal property and some other slaves in addition, to one Geo. W. McElrath, as trustee, to secure a debt due by said David McCaleb to Laughlin, Searles & Co., Commission Merchants, doing business in the city of New Orleans, which co-partnership was composed of Wm. Laughlin, Charles J. Searles, and Edmund C. Laughlin, which latter is now the husband of your oratrix. The debts secured by said deed consisted of the accommodation indorsement of a draft drawn by said David McCaleb on, and accepted by Wm. Laughlin, for $3,201 61, dated 23d March, 1846, and payable seven months after date, to-wit: On the 26th of October, 1846, and also a promissory note of said McCaleb in favor of said Laughlin, Searles & Co., dated May 1st., 1846, and payable Nov. 15th, of the same year.

In addition to these debts, said McCaleb owed other large debts which were pressing, and which rendered his situation precarious, though said lands with its valuable improvements and the slaves and personal property were reasonably worth more than one hundred thousand dollars at that time.

Your oratrix further avers, that said John M. Chilton and Charles J. Searles, pursuant to the terms of their said deed of trust, advertised the property for sale at public outcry, on the 15th day of June, 1846.

Before the appointed day, the said David McCaleb had, without difficulty, procured the promise of assistance from several of his near kinsmen, who were men of large means and credit, and one Jonathan McCaleb, his uncle, who was much attached to his nephew, said David McCaleb, had promised to purchase said property at the sale, and taking title in his own name, give David McCaleb ample time and opportunity to work out of his debt and re-pay to him such amount as he should have to advance for the purpose of making the purchase. Accordingly, said Jonathan McCaleb attended said sale amply prepared and fully determined to purchase said property, in trust, for the benefit of his said nephew. Your

oratrix had, however, in the meantime solicited a similar assistance from her father, the said Joseph E. Davis, who had consented to make said purchase for the same purpose, and on like terms of trust to secure and hold the same, that your oratrix and her said husband might be able in time to redeem the property, except that said Joseph E. Davis required that his purchase should be in trust for your oratrix, his daughter, instead of David McCaleb. The latter was brought to give his assent to this proposed arrangement, on the suggestion that they would be more secure in their homestead and in a competent support if the title should become vested in your oratrix, as it would thus be secure from the reach of any creditors of himself. On the day of the sale the said Joseph E. Davis, and the said Jonathan McCaleb, attended by others of his kindred, arrived at the appointed place, each ready to carry out the arrangement which had been determined on, and it was not until after a consultation of considerable length, and with protestations of reluctance on the part of Jonathan McCaleb, that it was finally agreed that the purchase should be made by, and in the name of Joseph E. Davis, to be held for and sold to your oratrix on payment of such sums with the interest thereon, which said Joseph E. Davis might be required to pay or assume, instead of being bid in by, and in the name of Jonathan McCaleb, to be redeemed in like manner by David McCaleb. But when this was agreed upon, and said David McCaleb withdrew from his contemplated arrangement and refrained from bidding at the urgent solicitation of the said Joseph E. Davis, it was upon the thoroughly well understood agreement that the one arrangement was to be a substitute for the other, each having been designed for the sole benefit, assistance and protection of your oratrix and her said husband, to secure for them the only homestead which they had possessed since their marriage, and the trust so assumed, by pledges to do for them what others were thus prevented from doing, was at that time regarded by said David

McCaleb and his kinsmen, as well as by Joseph E. Davis, as imposing upon the latter obligations of the highest character, which were fully recognized by him for several years, and until the happening of the events to be hereinafter narrated.

Your oratrix further shows, that so determined was the said Jonathan McCaleb to buy said plantation and personal property for the use of his said nephew, that he bid more than any one else for some of the slaves, and it was evident to all present, that he would become the highest bidder for all of said property, but for the yielding of the said David McCaleb, who consented, as hereinbefore stated, with reluctance to the purchase by Joseph E. Davis, and then the purchases which had been made by said Jonathan McCaleb were, by consent of all transferred and reported as the bid of the said Joseph E. Davis.

Your oratrix further avers, that it was made known at said sale to all who were present, that said Joseph E. Davis was bidding for your oratrix, his daughter, and the wife of the owner of said property, and on that account no bid was made by any disinterested person, and as a result, there was no substantial competition. It resulted that all of said property, real and personal, was knocked off to said Joseph E. Davis, as the highest bidder, at the sum of $28,531, which was scarcely more than one-third of the value of said property.

Your oratrix further avers, that the creditors who were entitled to receive the proceeds of said sale, were friendly to David McCaleb and with the kindly purpose of facilitating the accomplishment of the designs of said Joseph E. Davis, in behalf of the wife of said David, they consented that the purchase money should not be required to be paid in cash, as had been required by the terms of sale, and which confronted other bidders as a necessity, but your oratrix was left in undisturbed possession of all the property without the payment of one dollar of cash, and her said father executed instead his own note to Charles A. Jacobs for the principal and interest of his debt,

including even the trifling cost of advertisement and the charges of the commissioners for making the sale, the intention and object being that the said David McCaleb might be able to meet all such payments by the proceeds of the crops which the property was expected to produce under his cultivation for the benefit of his wife. The trustees who made said sale, John M. Chilton and Charles J. Searles, thereupon executed an agreement between themselves as parties of the first part, and Joseph E. Davis as party of the second part, dated the day of said sale, whereby the purchase by said Joseph E. Davis was recited, and the price of the several articles set forth aggregating the sum of..... .....$28,531 00

The claim of Jacob's was stated to be,

Principal.....	$13,732	00
Interest.....	579	38
Commissioner's fee.	715	56
Advertisement fee.....	10	00
Total	$15,036	94

Leaving a balance of..... ....$13,494 06

Said agreement recites that said Joseph E. Davis executed his note for said aggregate of $15,036 94, payable on the first day of December, 1846, at the Mechanics' and Traders' Bank of New Orleans, with interest thereon at eight per centum from date. But it was further agreed, that upon payment of one-third of said note at maturity, viz: $5,012 31⅓ and of the interest then due and in arrear on the whole sum specified in the note, then the time for the payment of the residue should be extended to the first day of December, 1847, and then upon payment of a like third of the residue of said sum of money in said note remaining unpaid, and all interest due thereon, the time of payment of the residue shall be extended till the first day of December, 1848, when the whole of the residue and all interest accrued thereon, shall be payable

absolutely, and it was further agreed that the title to all said property should remain in said trustees until the final payment and discharge of said purchase money, and that said trustees should then, by an entry of such satisfaction and a transfer of title, either made on the margin of the record of said agreement or otherwise, vest the title of said property, absolutely in said Joseph E. Davis. But it was provided, that if he should fail to make said payment, that said agreement should be void and of no effect.

It was further stipulated, that the debt of Laughlin, Searles & Co., amounting to about $4,200, should be paid by said Davis, and the surplus to said David McCaleb.

Your oratrix further avers that after these arrangements had been comsummated, the said David McCaleb continued the cultivation of the crop, and exercised every act of dominion over all the property in precisely the same exclusive manner as if the title had been vested absolutely and directly in your oratrix instead of Joseph E. Davis, for her use, and the said Joseph E. Davis never did, at any time during the life-time of said David McCaleb, exercise any sort of control, or pretend to have any sort of personal or beneficial interest therein. Not only was there no visible change in the management and control of said property, but your oratrix avers that no account was kept, made, or demanded, as to the rents, issues, and profits of said property, and the debts which had been assumed by Joseph E. Davis, in the arrangement aforesaid, were considered by said Joseph E. Davis and McCaleb as debts of your oratrix, to be paid for her by her said husband, by means of said property, and were so treated by both of them. The said David McCaleb was a man of great dignity of character, sensitive, high spirited, and self-reliant, and quick to resent in an aggressive manner, any infringement of his rights by others, and your oratrix, who well knew and distinctly remembers the circumstances which she has narrated, avers that it would have been a moral impossibility that the purchase of

said Joseph E. Davis could have been made on his own account, at such a price, and it would have been equally impossible, if it had been so made, that the said David McCaleb could have been induced to remain for a day a tenant at will and a pensioner on the bounty of another. Your oratrix avers, on the contrary, that her said husband treated said property as the separate estate of your oratrix, and shipped the crops, during his life-time, and applied the proceeds to the payment of the debts which had been assumed by said Joseph E. Davis, and of other incumbrances, and that he lived and died, not only with the conviction that all of said property had been thus secured to his wife, but without any sort of thought or suspicion ever having been suggested or having arisen in his mind that any claim adverse to your oratrix could ever be set up by Joseph E. Davis or his heirs.

Your oratrix further avers that said David McCaleb died during the month of May in the year 1847, and your oratrix shipped the crop of that year, as that of the preceding year had been shipped, to William Laughlin & Co., to the credit of Diamond place account, for the Charles Jacobs, judgment. In July, 1848, your oratrix married Edmund C. Laughlin, her present husband, who was at that time a member of the firm of William Laughlin & Co., aforesaid.

Your oratrix fully informed her said husband, E. C. Laughlin, of the situation of her property, and urged him to consent to live with her on the estate, instead of in New Orleans, and aid and assist her in paying off her said debt, to which he finally assented. Your oratrix, and her said husband, continued to live on said plantation, shipping the crops as before, and applying the same, sometimes through their merchants, and sometimes by direct payment to Joseph E. Davis, to the discharge of said indebtedness.

Some years after the marriage of your oratrix with said Edmund C. Laughlin, and after she had paid a large portion of all encumbrances, and some other indebtedness which it be-

came necessary to pay in the course of litigation, your oratrix requested her said father to make a title to her, and allow her to secure him in any balance for which he might be liable; and this request, and others of similar import suggesting different modes for the consummation of her wishes in that respect, was never complied with. But his failure to do so was never at any time, accompanied or explained by advancing even the slightest claim of beneficial interest in himself.

The request of your oratrix was disposed of variously, sometimes evasively, and sometimes by a counter-suggestion, but your oratrix doth aver that in no instance, either by letter or in personal interview, did he at any time, (except as hereinafter set out) justify or explain his failure to convey title to your oratrix, by pretending to own or claim for himself, any interest in her said property. On the contrary, on such occasions he discussed the question, always, as one of prudential consideration, imparting by his words and reason, a full admission of the absolute ownership of your oratrix, and suggesting that it was more prudent that he should retain the title of the property for your oratrix, the better to keep it separate from the property of her husband, and, at the same time, distinctly disclaiming any interest therein for himself.

Your oratrix avers that her ownership of said property was repeatedly thus admitted, on such occasions, by said Joseph E. Davis, both orally and in writing, in letters addressed to her and subscribed by him.

Your oratrix further avers, that on more than one occasion, when she had suggested the danger which she incurred, and the want of security which she had felt in permitting the title of her property to be held in his name, he responded and declared to her that, to guard against any accidental trouble which might arise from that circumstance, he had devised said property to her, your oratrix, in and by his will which he had prepared and executed; which declaration was made to her for the purpose of inducing her consent to permit him to re-

tain the title of her said property, and which declaration she has no doubt, was true when made; and your oratrix unwillingly permitted the continuance of said trust, and continuously occupied said plantation as a homestead, and made payments, annually, until before the year 1858 she had more than re-paid to said Joseph E. Davis all money and debts paid out and assumed by him for her, on account of said property.

Your oratrix further avers, that on the 27th day of December, 1858, he had conceived the purpose of securing the ownership of said property to himself, and of converting the title which he had held in trust for your oratrix, into an indefeasible and beneficial title, contrary to all of his previous declarations and assurances. Whether this determination was arrived at by the evil advice and influence of others interested, or by a desire to consummate certain plans of his own, your oratrix does not know.

Your oratrix does not in the least, question the purity of motives which actuated her said father in assuming this trust to the exclusion of said Jonathan McCaleb, but she accords to him that integrity of purpose in entering upon said trust which was dictated alike by good conscience and parental affection; but his subsequent defection, as explained by his own words hereinafter stated, based upon the belief, on his part, that the life estate which he substituted, or has sought to substitute as a provision for your oratrix, would be of equal benefit to her, is explicable to those only who knew, or can be brought to understand the extraordinary characteristics of mind which dictated his most arbitrary actions in his dealings with, and for those whom he regarded as members of his family, and whom he, perhaps, intended to make objects of his bounty.

Your oratrix had been twice married, and remained yet childless; and that fact, she believes, brought her said father to the desire, and led him eventually to reconcile it to his conscience, to repudiate the rights and just claims of your oratrix, and to seek, by the means which she is now about to narrate,

to acquire said property that he might be able to dispose of it by will to his own heirs or devisees, instead of permitting your oratrix to dispose of it by will or otherwise, or, instead of allowing it to descend to her heirs.

Be this as it may, your oratrix avers that such had become his purpose, and he compassed it, or attempted to do so, under the following circumstances, and in the following manner:

On the 27th day of December, 1858, when the said Joseph E. Davis was just beginning to recover from a dangerous illness, and while he was yet still so feeble and nervous that his family was still very anxious about him, and careful to avoid everything that could agitate or excite him, he, the said Joseph E. Davis, said to your oratrix, Florida, who was then in attendance upon her father, the said Joseph E. Davis, that he would like for her husband, the said E. C. Laughlin, to be sent for, who was then at his own home on said Diamond place, several miles away; which was accordingly done; and when he arrived, he and your oratrix were called into the office of said Joseph E. Davis and a paper was put into the hands of your oratrix, which he desired her to read aloud, without having given any explanation as to its contents or purport; and when your oratrix had read it, both she and her said husband were astonished to find it a lease to be signed by your oratrix and her husband, and the said Davis, in which the said Davis conveyed the Diamond place and the slaves so purchased by him as aforesaid, unto your oratrix, Florida, for life, and said conveyance also contained an acknowledgement that the sole, legal and equitable title in and to said plantation and slaves, and other property, was in said J. E. Davis; all of which will appear by reference to a copy of said deed hereto appended, and marked "Exhibit—," and prayed to be made a part of this bill.

Your oratrix shows, further, unto your honors, that upon reading said deed and becoming aware of its contents, your oratrix was so astonished that she could not speak for awhile;

but at length said that it seemed to allow her but a life interest in her own home; to which the said J. E. Davis replied, "I think it the best way of securing your interests."

Your oratrix replied that she could not see how that could be—adding that Lise Mitchell, and Joseph D. Mitchell, the defendant, whom the said J. E. Davis had adopted, were surely sufficiently provided for by giving them the plantation which he had given to their mother, on——Bayou, Louisiana, which was as valuable as Diamond Place, and besides, he still had "Hurricane," the plantation on which he then lived; to be divided between them. To this the said Joseph E. Davis replied, "that they, Lise and Joe Mitchell might not like to dispossess their father." Your oratrix replied, "neither would I like to dispossess my husband." "That is it" replied the said J. E. Davis, "the place would go to strangers." Again, your oratrix remonstrated with the said Davis, her father, and reminded him that when the place was sold at the trustee's sale, he had at her earnest request, bought it in, and that this had been done only with consent of Mr. Jonathan McCaleb, who anxiously desired that it should not go out of his family, and that he, the said J. E. Davis, had promised her in the presence of the said Jonathan McCaleb, that as soon as the debt which he had assumed, or would have to assume, was paid to him, he would make her a fee simple title to the place, and that, notwithstanding all he had ever paid out on the place had been re-paid to him, he now wished her to take only a life estate in her own home, which she had thus bought and paid for, and his only reply was, "I think it best for you."

He, the said Joseph E. Davis, then requested your oratrix and her said husband to walk over to his library, some distance from the house where they were, and sign said deed, and your oratrix then replied, "Papa, I beg you not to urge me to this injustice to myself; I cannot do what you ask." And he, the said J. E. Davis, then took her by the arm, and in his eagerness and anxiety to have said deed signed, almost forced her

to the office, through a heavy rain, and in his slippers and dressing gown, and without his hat.

Your oratrix shows further unto your honors, that seeing the nervous and excited condition of her father, and fearing disastrous consequences to him in his then feeble state of health, if she should any longer oppose him, under this compulsion, then and there signed said deed.

Your oratrix shows further, unto your honors, that they afterwards acknowledged said deed as appears by reference to said deed on the first day of May, 1859, and that said acknowledgment was extorted and forced out of them by threats on the part of said Joseph E. Davis, if they did not acknowledge it, to take possession of the place and put an overseer on it, and leave to your oratrix the bare occupancy of the house and garden with no other provision.

Your oratrix further shows unto your honors, that from the time she was induced by her said father to sign said written acknowledgment up to the time of his death, on all occasions on which it seemed proper for her to speak, she expressed to him, both in letters and personal interviews, her sense of the injustice which had been done to her. Immediately after she had signed said writing, on returning to the house, her stepmother, the wife of said Joseph E. Davis, who had always been an affectionate mother to your oratrix, and who did not approve the course pursued by her said husband, and who was, at the moment, engaged in conversation with another, looking around and on seeing your oratrix in tears, exclaimed, "You have not been doing something you ought not to have done," and your oratrix replied, "I have done what I was compelled to do." She, your oratrix, immediately ordered her carriage and was about to depart, though it was still raining, and her father coming in at the moment, remonstrated and insisted that she should remain, but your oratrix said to him, "I am going, sir, and shall never return to this house," and she did leave, at once, and never did return.

Your oratrix further shows, that after she had signed said deed, she had always supposed that by that act, she had finally and hopelessly lost her property, and whatsoever she has said or done, or omitted to do since, was under that belief. With a full knowledge of the feeling of your oratrix and her husband, her said father suggested to Mr. Laughlin, the husband of your oratrix, that he should purchase said property from him. Your oratrix and her said husband were much pleased at the suggestion because they at once entertained the hope, from the manner and occasion of the suggestion, that it was his intention at last to do justice by making a conveyance by a sale for a nominal price, or at least on such reasonable terms as might be justly expected, but said Joseph E. Davis, elicited by his suggestion, a letter asking the terms on which he would sell, and replied that he would take $50 00 per acre, which would make the price aggregate $60,000. This was in 1869, and included nothing but the bare land and tenements, when the market value of such lands was trifling, compared to their value at the time when he was permitted to purchase the same lands together with fifty slaves and their increase for eleven years before for $28,000.

Your oratrix does not know what influenced the said Joseph E. Davis to elicit by his own suggestion an expression of willingness on the part of your oratrix and her husband to make said proposed purchase, and to ask for his terms, and then to fix the price at such sum as to render such purchase impossible, but in his letter on the subject, dated January 25th, 1869, he states: "In my suggestion to Mr. Laughlin, I was influenced by the consideration, that in the course of nature my life was drawing to a close, and the propriety of having all the affairs of this life so arranged as to have no difficulty with others, in settling my affairs after I was gone."

Your oratrix further avers, that Joseph E. Davis, son of Hugh R. Davis, to whom said will, in case said Joseph D. Mitchell should not survive your oratrix, and should die without issue, has departed this life, and she further shows

that Jefferson Davis and Joseph H. D. Bowmar are the executors of the last will and testament of said Joseph E. Davis, deceased, and reside in this judicial District.

To the end, therefore, that said defendants may, if they can, show why your oratrix should not have the relief hereby prayed; and that the lease, or instrument in writing, whereby your oratrix conveyed her said property to Joseph E. Davis, or acknowledged that the right thereof was in him, be adjudged void and of no effect as against your oratrix, and that the devise of said property in and by said will to the defendant, Joseph E. Davis, be decreed to be void, and that the benecial ownership and title to said property be decreed, as against said, Joseph E. Davis, deceased, and his devisees to be in your oratrix; and that an account may be taken of the payments which were made by, and for your oratrix in the premises, that it may be ascertained whether or not she has in fact paid to said Joseph E. Davis the full amount which she was bound to pay to entitle her to the relief hereby prayed, as she has heretofore alleged; your oratrix being willing and hereby offering to pay any balance which may be found against her on such accounting, to the parties entitled thereto, and that upon the ascertainment, that your oratrix has fully paid all such sums, as in equity she ought to have paid, or upon her payment thereof, now, that she may be decreed to have the absolute, indefeasible title of said property as against said defendants.

And that if your oratrix hath, in any respect, mistaken her appropriate relief, or hath failed to ask for the same, that she may have such other and further relief as the facts shall warrant, and may seem just and equitable.

May it please your honors to grant unto your oratrix writs of subpœna, to be directed to the said J. D. Mitchell, and to the said J. Davis and J. H. D. Bowmar, as executors of the said J. E. Davis, deceased, commanding them, and each of them, personally, to be, and appear before this Honorable Court, at a time to be therein stated according to the rules of this Honorable Court, then and there to answer the premises, and further to abide and perform such furtherances and decree in the premises as may seem meet and just.

And your oratrix will ever pray, &c.

It is indispensable to a clear understanding of the issues of fact, that we shall first carefully observe *all* the denials of the answer. They may be enumerated:

1st. A general denial of complainants ownership where ever it is asserted in the bill.

2d. A denial of "any arrangement, agreement or understanding made by said Joseph E. Davis with said David McCaleb, or with said Jonathau McCaleb, or with the complainant, for the purchase of said property in trust for complainant, and upon information and belief defendant alleges the truth to be, that the said Joseph E, Davis purchased the said property at said sale in his own right, and thereby acquired the full beneficial and legal title thereto."

3d. "Defendant says, it is not true as alleged in said bill, that said J. E. Davis, never, during the life-time of said McCaleb, claimed to have any beneficial interest in said property, but on the contrary he alleges the truth to be that the said McCaleb, and the complainant at all times recognized the ownership of said J. E. Davis in said property," &c. This is an affirmative allegation, and yet the answer gives no instance of such assertion by Joseph E. Davis, and neither states nor offers to prove any fact tending to substantiate it.

4th. "He denies that complainant shipped the crop of 1847, to be applied to the Charles Jacob judgment, or that the crop of the previous year was shipped for the account of said indebtedness, or that any other crops were so shipped. And on information and belief, alleges the truth to be that neither the said David McCaleb, nor complainant, nor any one else ever paid to said Joseph E. Davis any portion of the said sum of $28,531, which constituted the purchase money of said Diamond Place, nor was it ever contemplated that such sum should be refunded."

5th. "Respondent denies that the ownership of complainant in said property was ever recognized or admitted by said J. E.

Davis, to her or any one else, either orally or in writing, or that any claim or pretense of ownership was made by complainant to said J. E. Davis at any time."

6th. "He denies that the signature of complainant or her said husband or their subsequent acknowledgment of said deed was procured by the compulsion, threats, or other undue influence of said J. E. Davis, but he alleges that they signed sealed, and acknowledged said deed, as their free and voluntary act and deed, and said deed was intended by said J. E. Davis as a proviso for his said daughter, and as an assurance to her of a home for the remainder of her life."

These denials are broad and put in issue the material allegations which constitute the foundation of the relief sought. It is important, however, to observe the distinction between *facts in issue*, and facts offered in evidence as tending to prove or disprove the *facts in issue*, A clear and exact apprehension of this distinction, important in all investigations of facts, will be found more than usually material in the analysis of the evidence in this case. There may be but one fact *in issue* and yet a hundred in controversy which are of vital importance as tending to establish or refute the truth of the *one* which is in issue.

The one and only fact which is in issue in this suit, is the agreement under which complainant avers that J. E. Davis bought in her homestead for her.

She affirms that he bought in trust for her.

The defendant denies it and asserts that he bought it in his own right for himself.

These are conflicts of assertion, between the parties relative to the existence or non-existence of other facts, both in the averments and denials of their pleadings and in the assertions of their witnesses, but they rank in importance according to their relation to the *fact in issue*, and

according to the strength of the presumption which they import in relation to that.

This well understood, we approach the task prepared to assign to every controverted fact, brought forward as evidence its proper place, and to accord to each its just force and influence in determining the question to be decided, which, in legal phraseology, we denominate the *issue.*

Thus, one of the propositions of the defendant is that complainant freely and voluntarily signed a certain instrument acknowledging the legal and equitable title of this property to be in J. E. Davis. The existence of such a fact would have an almost irresistible tendency to disprove the *issue.* It will become most material therefore to determine the circumstances under which such an instrument was signed; unexplained, its value as evidence can scarcely be over-estimated. The same may be said of another fact affirmed in the bill, and denied in the answer, viz: The question whether or not the complainant shipped the crops and had them applied to the payment of the Jacob's indebtedness, which had been assumed by Joseph E. Davis.

The theory propounded by the defense is, that Jos. E. Davis bought the property "in his own right," giving to complainant the usufruct and permitting her to occupy it as a home. The payment of the purchase price by Florida Laughlin would be conclusive that she was the party really interested, *the real debtor, the real purchaser,* and therefore we find the defendant most emphatically and specifically denying that fact, and denying that it was ever comtemplated that Florida Laughlin should pay any part of said purchase money.

Again, if it be true that Joseph E. Davis, either orally or in writing, acknowledged that he had no personal interest in the purchase, but that the interest was the complainants it would be proof, all but conclusive, that the purchase was made under the agreement alleged.

That, therefore, is another fact on which the parties are in opposition in their pleadings.

And so, if the complainant herself had, in her communications with her father, spoken of and treated the matter between them consistently with her version of it, and if her father did not correct, contradict, or dissent, it would be a most potent factor, as an admission from him as well as a part of the *res gestæ* wholly inexplicable except on the theory of the truth of complainant's account of it.

We therefore find specific denials of these averments.

Thus, it will be seen, that the parties in their pleadings, have not only plead to an issue of fact, but have selected and marked off their battle ground. They have put themselves in opposition on the nearest cognate facts, as already enumerated, and as they shall be determined, so must be the *fact in issue* and the final determination of this cause.

An averment of the bill, most material to the present inquiry on p. 6, is, that it was made known at the sale that Joseph E. Davis was bidding for Mrs. Laughlin, and that in consequence, there was no substantial competition, and that the property was knocked off at about one-third of its real value.

This fact is not denied by the defendant and might therefore have been relied on without proof. It was a course which promoted the purpose of Joseph E. Davis at the time. It is a practice frequently resorted to when the parties interested in property sold at public auction, desire to "*buy it in*," as it is called, and we may well believe it was not neglected in this case.

Such announcement and the purchase under it would naturally go abroad in the community and give rise to the public rumor and common repute that the property had been "*bought in* for the wife. This one would naturally expect, so that if it did not follow, it would suggest inquiry for the cause of its

absence. We have therefore not contented ourselves with the admission of the answer by its failure to deny, but have taken proof to show the common repute which followed the sale, being the result of the announcement, as will appear from the following

Extracts from Depositions.

THOS. C. BEDFORD.

After stating that he lived about ten miles from the Diamond Place at the time of sale, says: "I remember of hearing of the sale about the time it occurred. * * * The impression made on my mind and the general talk there was, that it was bought by Mr. Davis for Mrs. McCaleb," and that there never was any different reputation as to ownership until after the death of Joseph E. Davis, so far as witness ever heard of.

G. W. M'ELRATH

Answering questions as to reputed owner and his means of information said: "I only know from public rumor. I was not at the sale. Mrs. Laughlin." * * It was rumored that Mr. Davis was purchasing the place for Mrs. Laughlin, and owing to that rumor the property did not bring its full value." * * * It was understood that the place was puachased for Mrs. Laughlin and she resided on the place and was considered the owner."

Defendant propounded this cross-interrogatory to the witness:

"Was it not well known to every one cognizant of the true state of the title that Mr. Jos. E. Davis was the real owner of the Diamond Place and that Mrs. Laughlin, his daughter had only the usufruct of the property during her life?" Ans. "Rumor said not—that he was the purchaser for her."

REV. DR. W. W. LORD

"So far as I heard any thing on the subject it went to the effect that on the day of the sale other competitors withdrew for the reason that Mr. Jos. E. Davis wished to *bid the place in* for his daughter, or in the interest of his daughter, Mrs. Florida M'Caleb. Mr. Jonathan M'Caleb, who was minded to bid withdrew—that is, he did not bid. I think I can safely say that the general reputation and belief was, that Mr. Jos. E. Davis bid in the place for the benefit of Mrs. Laughlin.

To a cross-interrogatory, "Is not your knowledge on that subject derived almost exclusively from hearing the matter talked of in the family," he answered, "I would say mainly but not exclusively. The manner in which the family spoke of it was *as a thing well known*, not by way of asserting it against contradiction or any other view of the thing."

MRS. JULIA PORTERFIELD.

"In June, 1846, I lived at Diamond Place, * * my brother-in-law, Mr. David McCaleb, owned Diamond Place at that time, and I lived with him and his wife—was raised by them. * * Mr. Jonathan McCaleb was present the day the sale took place. He came there intending to buy the place for his nephew, Mr. David McCaleb, Jr. I know he did not do this because of an earnest request of Mr. Davis, who preferred to buy it for my sister, Mrs. Laughlin. I know this because it is a matter of common repute and talk in the family, both at that time and since. I know it just as I know that Mrs. Laughlin is my sister. * * I resided on the place until after my marriage, which I think was in 1850."

Thus, we see the effects of this announcement, giving rise, as it naturally aud inevitably would do, to a widespread impression and belief in the minds of the public—people who were not there—who felt no interest in it—who can't tell in

many instances whence came the impression, but there it is; in the store-house of memory, as surely as the skeletons of dead animals are in the fossiliferous rocks.

From these effects we may well reason to the cause and find corroboration of the averment of the bill. But we have also the positive testimony of a witness who was present, viz:

LOUISA NEIL.

In answering the question: "Did you hear Mr. Davis say anything on the day of sale about his buying the Diamond Place. if so what did he say; when did he say it and to whom, she said:

"I did. He said he bought it in for Mrs. Laughlin. He said it there, and where the sale was."

INADEQUACY OF PRICE.

As the announcement that the purpose of J. E. Davis was to buy it in for Mrs. Laughlin, was intended to promote that purpose, by discouraging competition, the inadequacy of the price becomes material, being, in that view, another fact, from which we may look to its cause. If we find the price was grossly inadequate we may reasonably ascribe it to the only cause known to us, the *"bidding in."*

The evidence leaves no doubt as to the inadequacy of price. We subjoin a few extracts from depositions:

G. W. M'ELRATH.

"I was familiar with the prices of land and slaves in Warren county, Miss., in 1846. I do not consider the property sold for one-half its value."

T. C. BEDFORD.

I should consider that a very great bargain. * * I should think the property at that time worth double that amount."

THOS. RIGBY.

The testimony of this witness shows that the slnves alone were of more value than the price bid for land and slaves.

JOS. E. DAVIS.

Extract from his letter of January 25, 1869, to his daughter. "I wish to make the terms as easy and satisfactory as they can be made. Before the war I considered the place worth one hundred dollars per acre; that price I refused for the Hurricane. I know it is the best place in Mississippi of its extent."

JEFFERSON DAVIS.

"I should say one hundred dollars per acre. Places less valuable sold for more. The Diamond Place was most favorably situated. It was regarded as exceptionably valuable. It was something over a thousand acres as I recollect." * * "I think it (the price bid) was very far below the value, and also much below what must have been bid if there had been competition between Jonathan McCaleb and J. E. Davis."

From these extracts we may fairly conclude that the "buying in" was for an inadequate price. The bill says, it "was scarcely more than one-third of the value of said property," which is not denied in the answer. We do not, on this account, impute fraud or invalidity, but argue that it was the effect of the arrangement made known at the sale.

We have heretofore observed upon the importance of the fact that the purchase price was regarded and treated as the debt of Mrs. Laughlin, which fact is denied in the answer. As it is entirely conclusive of the *issue*, in case a denial was to be expected. Let us eximine the testimony.

In the first place, the conduct of the commissioners in not requiring the *cash* from Joseph E. Davis for the surplus, shows that he had a thorough understanding with David McCaleb as to the surplus. The $15,000 payable to Jacobs was provided

for by an agreement and bond, executed by Joseph E. Davis, who never paid or was required to pay anything to the commissioners. He was to settle on such terms as he might make with the beneficiaries, and no definite arrangements were made, no notes given for the payment of the part, which it was said in the agreement, was to be paid to Laughlin and Searles, or to David McCaleb. It is entirely evident from the transaction that Jacobs was not in a hurry for his money, because he did not exact any part of it. His object was not to acquire better security, for his was the first mortgage on more than one hundred thousand dollars worth of property. Evidently this sale was not made because Jacobs was pressing. The second mortgagees seemed to be happy also, and when the sale was made gave no sort of trouble, made no exactions, took no securities, and neither received nor demanded any cash. The same may be said as to the surplus going to David McCaleb. The only people who were pressing for their money did not get any, and those who made the sale did not seem to want any. Jonathan McCaleb, who had a judgment against his nephew for $55,069 34, recovered June 11, 1846, just before the sale, was devotedly attached to his nephew, as shown by the evidence as well as by the size of his debt. He seems to have mistrusted the benevolent intentions of the father-in-law for his nephew, as did the latter also, but the counsels of the wife prevailed.

It is also evident, for another reason, that Jonathan McCaleb's claim would never have been allowed to oppress his nephew. After the sale he gave his claim to his neices, the daughters of Guion, to the extent of its *pro rata* or distributive share of the surplus, but he was careful that it should be used for that purpose only, and he adds to the transfer the following:

"It is further hereby declared to be my intention after the payment as above, of whatever *pro rata* I may be entitled to

with other creditors, to relinquish to said David McCaleb, the remainder of my claim against him, and I do hereby relinquish the balance thereof to him.

Witness my hand and seal, June 17, 1846.

JON'A. MCCALEB.

Teste: JNO. THATCHER.

We will now examine the depositions of witnesses as to who was *expected* to make the payments as between Jos. E. Davis and Mrs. McCaleb.

Extracts from deposition of Honorable

JEFFERSON DAVIS.

"In 1835 I left the army and settled on a piece of wild land adjoining my brother's plantation, and about twelve miles from Diamond Place; thenceforward my opportunity for observation was the frequent intercourse between the two families. Between my brother and myself there existed the strongest bond of affection and mutual confidence, resulting in very free conversation on all which concerned either of us."

* * * *

"My brother spoke to me of the transaction, but I can only recall the general impression created by his speaking of Jonathan M'Caleb as having embarrassed him in the purchsae from what he believed to be a desire to get possession of the property himself, and to defeat his object, which was to purchase it in the interest of his daughter and her husband, David M'Caleb.

"I do not know that he said anything to me as to the matter of repayment or any terms on which the place was to be permanently secured, to those for whose protection I understood him to have purchased it."

* * * *

"Really I don't know anything about what was done with the crops, Mr. and Mrs. Laughlin merely mentioned to me that

they were endeavoring to pay off the purchase money for which I understood my brother had made himself responsible, by drafts on the house of William Laughlin & Company, and William Laughlin, the senior member of the firm wrote to me that he had taken ten thousand dollars of my money, to cover that amount of my brother's indebtedness to him, but whether this was on account of the purchase of Diamond Place I cannot say."

Int. 6. "About what time was it that the ten thousand dollars of your money was appropriated to the payment of your brother's debt to William Laughlin & Company, and what was the occasion of that transaction?"

Ans. "It was about 1850 or 1851 when William Laughlin was under a very heavy pressure and endeavoring to save himself from the bankruptcy which followed.

* * * *

Int. 13. What were your own impressions as to the status and occupancy of the property derived from your intimate acquaintance with the family. This inquiry relates only to the time preceding the year 1858.

Ans.—Without ever asking a question of any of the parties, the circumstances left me always under the impression that she held the property with the encumbrance of re-payment of the purchase money, for all the period named."

Int. 14. "Before the execution of the lease of 1858, had any fact occurred, or any word been spoken to you or in your presence by your brother which tended to dispel your impression just stated, or which were at variance with it?"

Ans. "No sir, I think nothing before that date."

* * * *

"And therefore my impression is that the change of purpose manifested in the demand of the lease referred to was from a lower estimate on his part of Mr. Laughlin, and offense taken at his daughter's attention to the orphan children of William

Laughlin, so close as to result in supposed neglect of her father."

Extracts from deposition of

MRS. JEFFERSON DAVIS.

"I never heard a question of Mrs. McCaleb's ownership of the place, but on the contrary heard complaints made, that Mr. Jonathan McCaleb had run the property upon Mr. Jos. E. Davis, as it was supposed, to secure it for the family of the McCalebs, and expressions of disappointment on the part of Mrs. McCaleb in the conduct of her uncle Jonathan, and several times I heard Mr Joseph E. Davis express annoyance at his course. So little was it expected that the Hurricane should pay for the Diamond Place, that the little extravagancies of Mr. and Mrs. McCaleb's house-keeping were commented upon as likely to render a call upon Mr. Joseph E. Davis necessary in making the stipulated payments."

* * *

Int. 5.—"Explain more fully what you mean when you say you never heard a question of Mrs. Laughlin's ownership.

Ans.—"I mean that I never heard any one else mentioned as the owner of the place for years after the sale. Never until I heard of the execution of the deed. I heard my brother-in-law find fault with her administration of the place, and say she ought not to have a place if she did thus and so, &c., but I never heard him question her right to the place. I could not give the sums that I heard were paid, but one January, a year or two after it was bought in, when Mrs. Laughlin was spoken to as to the extravagance of her journey to New Orleans, she became very indignant, and said they were not backward in their payments, and that it was nobody's affair.

* * * *

"Ans.—He always spoke of it as a debt incurred for her benefit. Whenever he went to Diamond Place he would re-

turn very angry at what he thought was the mismanagement there."

* * * *

"Int. 7.—Did you at any time hear Mr. Joseph E. Davis speak of this matter after the execution of the deed or lease in 1858; and if so, do you know from such conversation with him at what time he concluded to claim and retain the place as his own? Do you know from such conversation what causes moved him to that course, or were influential in impelling him to that course?

"Ans.—No, I never heard Mr. Jos. E. Davis speak of it. My confidential relations towards him had ceased, and I never heard him mention it; but I have heard his wife mention it very often: at that time I heard him speak of a disagreement with Mrs. Laughlin, which I knew by what his wife had told me, had reference to the property; but he did not explain it to me. He expressed simply in general terms that his daughter had not acted dutifully towards him. It arose about in this manner, he offered to pay my expenses and that of my children to Europe if I would go with him, I told him I did not want to go, but thought his daughter, Mrs. Laughlin, would; he said he did not wish her to go, I think he said she had opposed him."

Int. 8. "State anything else you know pertinent to this cause, as fully as if particularly inquired about?"

Ans. "I can only add the following circumstances: My husband had in the hands of Mr. Laughlin, a commission merchant in New Orleans, the sum of $10,000. Mr. Laughlin had failed in business, and in the spring of 1851, Mr. Laughlin, in answer to a letter from me, about other matters, volunteered the statement that he had so arranged as not to let my husband lose the money; that he had transferred it to the account of my brother-in-law, Mr. Joseph E. Davis, who, Mr. Laughlin stated, owed him, I think, $13,000. I saw Mr.

Joseph E. Davis, and told him what Mr. Laughlin said as to this indebtedness. Mr. Joseph E. Davis indignantly denied it, and said that he did not owe Mr. Laughlin a cent; that he was never behind with his commission merchant. I also know that Mr. Joseph E. Davis was troubled with the idea that the Laughlin heirs might become heirs of Diamond Place property, in the event of Mrs. Laughlin's death. He had become very much embittered against the Laughlins, to such an extent that he got angry when they were mentioned. My sister-in-law, Mrs. Jos. E. Davis, told me about the signing of the lease of 1858 by Mrs. Laughlin, and she said that she thought itwas an act of great injustice to Mrs. Laughlin. That had she been in her place she would have died before she would have signed it. I never had a circumstantial account of the signing of the lease of 1858, by Mrs. Laughlin, from any one else but Mrs. Joseph E. Davis, and the circumstances, as she detailed them to me, are about as stated in the bill filed in this case. I was struck with the circumstances when I read the bill. I have heard Mr. Joseph E. Davis say that if his daughter, Florida, should die he supposed there would be an 'Irish settlement' at the Diamond Place—referring to the Laughlins. I mention it just to show the spirit with which he spoke of the Laughlins. The conversation between my sister-in-law and myself in reference to the signing of the lease by Mrs. Laughlin, occurred during the year 1859, I think, in the autumn.

Extracts from deposition of

W. W. LORD.

Int. 2.—"Where did you reside prior to 1860, about the years 1855, '56, '57, '58 and '59?

Ans.—"At Vicksburg, I was then rector of Christ Church.

Int. 3.—"Are you acquainted with Mr. E. C. and Mrs. Florida Laughlin, and how long have you known them?

Ans.—"I am acquainted with them. Have been since some time in 1854 to the present time.

Int. 4.—"Were you acquainted with the late Mr. Joseph E. Davis?

Ans.—"I was.

Int. 5—"Will you please state whether or not you were sent for and consulted by Mrs. Laughlin in about the year 1858?

Ans.—"I was certainly consulted, and my impression is I was sent for.

Int. 6.—"Will you please state what was the purpose or desire of Mrs. Laughlin in sending for or wishing to consult with you, and will you please state what was her mental condition at that time? (Interrogatory objected to by defendants.)

Ans.—"It was with general reference to an interview she had had with her father, and the result of that interview. She was in a very distressing condition of mind. She seemed to think that a case had arisen where her natural affection for her father had led her to commit an act of great injustice to herself and Mr. Laughlin.

Int. 7.—"Did she inform you what act it was that she had performed, which had produced this mental distress of which you have spoken, and if she did, please state what that act was?

Ans.—"She had signed a paper which conveyed Diamond Place to her father, and gave her only a life occupancy of it. She had recently returned from Hurricane, where her father was sick.

Iut. 8.—"Are you familiar with the general reputation as to the purchase of Diamond Place by Mr. Joseph E. Davis, when it was sold for the debts of Mrs. Laughlin's former husband, and if yea, please state what was generally said and believed, and accepted as to the status of said purchase,

and the intention of said Joseph E. Davis in making the purchase?

Ans.—"So far as I heard anything on the subject it was to the effect that on the day of the sale other competitors withdrew for the reason that Mr. Joseph E. Davis wished to bid the place in for his daughter, Mrs. Florida McCaleb. Mr. Jonathan McCaleb who was minded to bid for it withdrew, that is, he did not bid. I think I can safely say that the general reputation and belief was, that Mr. Joseph E. Davis bid in the place for the benefit of Mrs. Laughlin.

Int 9.—"Has Mrs. Laughlin ever had any children?

Ans.—"Not to my knowledge. I am sure she has not."

* * * *

Int. 11. "Were you pretty familiar with the character of Joseph E. Davis, and was he or not a man disposed to be very intolerant of opposition on the part of any member of his family or relations?"

Ans. "It struck me that he was. I think that was his common reputation; a man of very arbitrary disposition, disposed to rule things. That was the way he struck me."

Int. 12. "Were you or not familiar with Mrs. Laughlin's feelings towards her father, prior to the events you have narrated?"

Ans. "I was; her devotion to him was exceptional, she was perfectly devoted to her father, her devotion to him was exceptional, in this respect, that it is rare to see a person in middle age retain so much filial feeling and such enthusiastic sentiments toward her father. I have frequently heard her use the expression that he was one of the noblest men that ever lived. She often spoke of his goodness to her. His goodness to her and her devotion to him was a frequent theme of conversation with her amongst her friends."

* * * *

Cross-Int. 1—"In Interrogatory 8, you are questioned as to general reputation concerning the purchase of the Diamond Place by Mr. Jos. E. Davis. Is not your knowledge on *et al* subject derived almost exclusively from hearing the matter talked of in the family."

Ans.—I would say mainly; but I think not exclusively. The manner in which the family spoke of it was as a thing well known, not by way of asserting it against contradiction or any other view of the thing."

Extract from Deposition of

T. C. BEDFORD.

To 5th. Int. witness answers:

"I remember of hearing of the sale about the time it occurred, but do not know whether under Deed of Trust or judgment."

In answer to 6th Int., witness answers:

"The impression made on my mind and the general talk there was that it was bought by Mr. Davis for Mrs. McCaleb."

* * * *

Extracts from deposition of

LOUISA NEIL.

Int. 4.—"Did you or not hear Mr. Davis say anything on the day of the sale about his buying Diamond Place. If so, what did he say, where did he say it, and to whom.

Ans.—"I did. He said he bought it in for Mrs. Laughlin. He said it there where the sale was. There were a good many white people there but they are all dead now. Mr. McDowell the overseer on the place for eight years was there.

* * * *

Int. 7.—"Were you or were you not here at the time Mrs. Laughlin went to Hurricane and signed the instrument marked Exhibit 'E' to the bill.

Ans.—"I was here. I did not go with her. Mr. Edmund Laughlin, Jr., went with her when she first went there.

I think young Mr. Laughlin came back for him and he then went there.

I think he did.

Her father was very sick and he sent for her.

* * * *

Extracts from deposition of

MRS. JULIA PORTERFIELD,

Int. 1. "What is your name and residence.

Ans.—"Mrs Julia Porterfield, Vicksburg, Miss.

Int. 2.—"Were you or not acquainted with David M'Caleb, Jonathan M'Caleb, and Mr. Jos. E. Davis?

Ans.—"I was, very well. They were relations of mine. Mr. David M'Caleb was my brother-in-law, Mr. Jonathan M'Caleb was the uncle of my brother-in-law, and Mr. Jos. E. Davis was the father of my half sister Mrs. Laughlin. Mr. David M'Caleb married my half sister Mrs. Florida Laughlin, the complainant in this suit.

In June 1846 I lived at Diamond Place Warren County, Miss. My brother-in-law, Mr. David M'Caleb, owned Diamond Place at that time, and I lived with him and his wife, was raised by them. I was present and on the place at the time Diamond Place and the slaves thereon were sold and purchased by Mr. Jos. E. Davis. The place and slaves were bought in by Mr. Davis for my sister Mrs. Laughlin.

The sources of my knowledge on this fact were right in the family from conversation at the time and since.

Mr. Johnathan M'Caleb was present the day the sale took place. He came there intending to buy the place in for his nephew Mr. David M'Caleb, Jr. I know that he did not do this because of the earnest request of Mr. Davis, who preferred to buy it for my sister, Mrs. Laughlin. I know this because it is a matter of common repute and talk in the family, both

at that time and since. I know it just as well as I know that Mrs. Laughlin is my sister. Mr. Jonathan M'Caleb was not a man of family. He was an old bachelor.

* * * *

Extracts from deposition of

E. C. LAUGHLIN, JR., (nephew of E. C. Laughlin.)

Int. 3. "Do you or not know anything about the execution of the instrument marked exhibit "E" to bill by Mr. and Mrs. E. C. Laughlin, in December, 1858? If yea, state what you know as fully and particularly as you can.

Ans.—"Yes sir. I went with Mrs. Laughlin to Hurricane, as I understand she went for the purpose of seeing her father, who was reported sick. She came to me in the evening, and told me I was to go back to Diamond Place and send my uncle down to Hurricane. I think that was the evening of the same day we went down to Hurricane.

Mr. Laughlin went down the next morning to Hurricane, as requested. I am under the impression that they returned, both that same day. The weather was very bad at that time.

When they returned, I noticed that something had happened to cause Mrs. Laughlin to look very sad, and I did not know what it was until she explained about the signing of the deed."

* * * *

Extracts from deposition of

J. U. PAYNE.

Int. 1.—"State your name, residence and occupation. How long have you engaged in that business, and where were you so engaged?

Ans.—"Name is Jacob U. Payne, residence, New Orleans, occupation, commission merchant. Have been here forty-two years, engaged in that business.

Int. 2.—"Were you or not at any time the cotton factor of

Mr. Joseph E. Davis, now deceased, and if so, state approximately the dates or years when you bore that relation to him.

Ans.—"I was the merchant of Mr. Davis from a short time after I came to this city until his death.

Int. 3.—Examine the annexed accounts marked "A," "B" and "C," respectively, purporting to be a copy or duplicate accounts rendered by the firm of Payne & Harrison to Joseph E. Davis. Were you the Payne of that firm? Are these accounts true and correct copies of actual accounts taken from your books and rendered to Joseph E. Davis?

Ans.—"Said accounts marked "A," "B" and "C," are copies taken from my books of accounts rendered to Mr. Davis. I am the Mr. Payne of the firm of Payne & Harrrison therein mentioned. Said accounts, "A, B, C," are herewith filed as exhibits to this answer." (Counsel for defendants objected to the introduction of the statement of the accounts, because they are secondary evidence of their contents.)

The witness now adds to his answer that said copies are taken from the press copies of the accounts rendered to Mr. Davis, and that he has compared them with the books, and that they are correct.

Int. 4.—"Examine the several accounts of sale herewith exhibited and state whether or not the same were rendered by your firm as they purport to have been on their face.

Ans.—"The accounts of sales herewith handed me marked exhibits, D, D–1, D–3, D–4, D–5, D–6, D–7, D–8, D–9, D–10, and D–11, (10 in all) are accounts of sale made by our house and rendered by us to Mr. Davis. There is one sale in the accounts marked "A," for which there is not account sales among the exhibits above spoken of. Said sale was of 25 bales of cotton.

Int. 5.—"State whether you had any knowledge of a transaction by which Messrs. Laughlin & Company., about the time of their failure, debited Jefferson Davis' account to Jos.

E. Davis' account for a large sum of money, thus taking the credit balance of the former to reduce the debit balance of the latter, on their books. If you heard of the matter at the time, state how you came to hear of it, and from whom. Do you or not know whether Joseph E. Davis acknowledged the claim made by Laughlin & Co., that he was indebted? Did you call on Messrs. Laughlin & Co., about that business? State all you know about it and your means of information.

Ans.—"I had no personal knowledge of the business of Messrs. Laughlin & Co., whatever, with Mr. Davis, until after Mr. Laughlin's failure, except that after Mr. Laughlin's failure I was requested by some one, I think Mr. Jefferson Davis, to go and examine the books of Mr. Laughlin, and examine the credits and debits of the two Mr. Davis'. The object was to get the debit on those books against Mr. Joseph E. Davis, settled by the credit then on the books, in favor of Mr. Jefferson Davis, as I reccollect.

Int. 6.—"Was Mr. Joseph E. Davis a man of wealth and means, or otherwise? In his dealings with you were his accounts habitually in credit, or otherwise?

Ans.—"He was a wealthy man; usually made large crops, and had money to his credit, or something to represent it; sometimes his accouut would show a debit, when he had his cotton on hand unsold.

Int. 7.—"What was the character of the personal relations which existed between yourself and Mr. Joseph E. Davis?

Ans.—"We were upon very good terms, might call them friendly relations, I suppose; had known each other a good many years before my coming here.

Int. 8.—"Had you any intimation of Mr. Davis' dealings with Laughlin & Company, before the circumstances narrated by you just now? Was it a matter of surprise to you that Laughlin & Company had a claim against him for so large a balance, or was it consistent with your knowledge and under-

standing of the condition and dealings of Mr. Jos. E. Davis that such balance should stand against him on their books at that time?

Ans.—"I think I will have to say that I cannot give you any opinion about that. I did not know that he had such an account, and cannot remember what impression it made on me."

* * * *

The following abstract of the accounts annexed to the deposition of J. U Payne, tell their own story:

Exhibit A.

Diamond Plantation—J. E. Davis,

1851. In acc't with PAYNE & HARRISON:

Nov. 19.	To invoice bagging, &c.....	$238	85
1852.			
Jan. 31.	" Coffee, sugar, &c	47	87
Mar. 30.	" Paid dft favor of Jno. I. Guion, $2897 70, with int. $45 71.....	2943	41
Apr. 20.	" put to credit of J. E. Davis' acc't,	2270	57
		$5500	70

CREDITS.

By total proceeds of 200 bales of cottou credited from Nov. 8, '51, to and including Jan. 22, '52	$5365	58
1852.		
April 20. Bal. int. account your favor.....	135	12
	$5500	70

New Orleans, April 18, 1852.

PAYNE & HARRISON.

Exhibit B.

Diamond Place,—In acc't with Payne & Harrison,

1853.

Feb. 21.	To this amount put to credit of J. E. Davis' individual account.....	$3797	37

CREDITS.

Proceeds of 97 bales of cotton credited from Nov. 13, 1852, to and including Feb. 4, 1853..... $3734 28

1853.

Feb. 21. By interest due on credits 61 09

$3795 37

New Orleans, Feb'y 21, 1853.

PAYNE & HARRISON.

Exhibit C.

Diamond Place—In account with Payne & Harrison,

1853.

July 16. To am't put to credit of J. E. Davis..... $2295 92

1853. CREDIT.

June 13. By sale of 60 bales cotton $2295 92

New Orleans, July 16, 1853.

PAYNE & HARRISON.

DEPOSITION OF E. C. LAUGHLIN.

This witness was a member ot the firm of Wm. Laughlin & Co., to whom the crops of cotton were shipped up to the time of their failure. William Laughlin was his brother. He testifies to the payment of the entire Jacob's debt by his house, and identifies letters and accounts of sales, and annexes accounts of sales of cotton which went to the cred t of the account. The accounts more than corroborate his statement in that they show the payment of the Guion debt also, and part of the debt to Laughlin & Searles, as will appear by the following extracts:

Exhibit B—To Int. 32.

Diamond Place—With Wm. Laughlin & Co.

Among the debits are—

1847.

Jan. 7. J. E. Davis dft to balance old acct..... $2357 57

Com'n for accepting 58 94

$2416 50

Dec. 6. Paid second instalment on bond to Chas. A. Jacobs, with 8 per ct int. to date 5829 32

Exhibit A.—To Int. 32-

Diamond Place in acc't with Wm. Laughlin & Co.

Interest made up to 1st April.

The first item is as follows:

1849.

Nov. 20. To balance as per acc't sent to E. C. L. $5121 54

Another item:

Dec. 5. J. E. Davis dft in favor of L. S. & Co. (Laughlin, Searles & Co.)..... ..... 2000 00

Com'n for accepting above..... ..... 50 00

$2050 00

Another item is—

Dec. 29. J. E. Davis draft favor C. A. Jacobs, due Dec. 15, '49..... .... $5788 69

Com'ns for accepting..... . ..... 144 72

$5933 41

Another item is—

1849.

Mar. 11. Paid Guion's judgment against McCaleb, $10,778 88

1850.

Jan. 26. E. C. L. order for J. J. Green & Co..... 986 58

Exhibit A—To Int. 22.

This account shows—

J. E. Davis draft favor of Laughlin, Searles & Co.....$2000 00

These various payments will be better understood by adverting to the bill, p. 7.

The Jacobs debt amounted to $15,036 94, payable in three annual instalments, beginning on Dec. 1, 1846.

The debt of Laughlin, Searles & Co., which constituted also part of the purchase money, was $4201 61. See bill, p. 4.

The Guion debt covered the entire surplus after the Jacobs debt, amounting to $13,494 06, and originated as follows:

John I. Guion, who was a lawyer, was the attorney of numerous creditors whose demands were subordinate to that of Jacobs, and of Laughlin, Searles & Co. David M'Caleb executed a third Deed of Trust to Guion as Trustee, covering the property conveyed in the Jacobs deed and that covered by the deed of Laughlin, Searles & Co., the same property being conveyed in all three deeds, except that Laughlin, Searles, & Co. had security enough to cover their debt, which had not been conveyed in the Jacobs deed. Guion filed his bill to marshal assets, and to compel Laughlin, Searles and Company to look to their separate security and leave the entire surplus of $13,494.06 for creditors represented by him, and it was so decreed.

This appears from the record of a suit by Guion and others in the Superior Court of Chancery. Mrs. Laughlin found among her old papers a reference to this suit, but by a name not on the index of the docket of that court. Her own knowledge of the suit was limited to information that it involved her claim to some slaves; being the additional property conveyed in the deed of Laughlin, Searles, & Co. Her Solicitors had caused diligent search to be made among the papers of the Superior Court of Chancery, and had themselves examined the index, but no trace of the suit could be found This search was made several times, once in aid of another suit. The papers pertaining to that court have fallen into great disorder, many years having elapsed since its abolition by a change in our judiciary system.

The file of the suit in question was found by the clerk of the Supreme Court since the time when the several searches hereinbefore referred to had been made. Opportunity of examining the record of that case offered for the first time two days before the day set for trial, Sunday intervening, and

when the case was called the above facts were stated orally in open court by complainant's solicitor, with an offer to embody them in an affidavit as a basis for an application for leave to amend the bill so as to explain the omission of reference to the suit and its result. The leave was granted against objection, and the amendment made. The amendment of complainants bill shows that the draft of her answer filed therein was prepared by Jos. E. Davis, her father, and sent to her for signature in a letter, telling her what it was and asking her to copy it, sign it, and retmrn it, the truth of which is abundantly established. Her answer in that case is very brief and refers to the answer of her co-defendant, Jos. E. Davis, and adopts it as part of her own. It is further averred and proven that she has never seen the answer made by her father, and had never been informed of its contents.

It contained an assertion, that at the sale referred to in in this bill, Jonathan M'Caleb was an active competing bidder. This statement in the answer of Jos. E. Davis seems to be volunteered, that is, that it was wholly irrelevant to that case, as no allegation of the bill attacked the sale or questioned its validity, or the adequacy of the price, but on the contrary that bill affirmed the validity of the sale and sought to obtain part of its fruit. Why Mr. Davis asserted the competition at the sale in that case must be left to conjecture. As it seems wholly irrelevant to any thing in the record, it may possibly be ascribed to some oral criticisms of counsel before that court on the argument relative to admitting him to answer after default. As the defendant in this case, however, solemnly and seriously insists that those averments are the words of this complainant by reason of her having adopted the answer as above explained, it becomes a pertinent inquiry how and why they were interjected. We cannot solve it, and leave it for conjecture, or for explanation

by defendant. He is welcome, however, to the full value of this solemn admission by complainant, howsoever it was procured!

Criticism was also madeon account of the omission of a statement of that suit, though the facts above referred to had already been stated, and indeed were known to defendant before the convention of this court.

Assuredly we are glad to have the records of that suit, inasmuch as it enables us the better to understand the payment of the $10,778 88 to John I. Guion by Wm. Laughlin & Co., as shown by the account, Exhibit A, to int. 32, to E. C. Laughlin, and charged to Diamond Plantation, and also the payment of $2943 41 to John I. Guion, as shown in Exhibit A, deposition of J. U. Payne, both sums being part of the purchase money paid by complainant.

When Wm. Laughlin & Co. failed, they had paid for this complainant on account of the purchase money of this property:

The Jacobs debt	$15,036 94
The debt of Laughlin, Searles &c	4201 61
Part of Guion debt	10,778 88
Making without int. or commissions ...	$30,016 93

Of this there remained a balance due to Wm. Laughlin & Co., of which firm complainant's husband was a member, amounting to some ten or twelve thousand dollars, which was paid by transferring to the credit of that account the money of Mr. Jefferson Davis to the amount of $10,000. See testimony of Mr. Jefferson Davis, Mrs. Varina Davis, and Jacob U. Payne, The latter, probably, was requested by Mr. Jefferson Davis to go around and examine the two accounts of which he speaks, for the purpose of seeking explanation of the assertion of Wm. Laughlin that he had passed Mr. Davis $10,000 to credit of an account on which his brother, Joseph

E. Davis, owed $13,000, in the face of Mr. Joseph E. Davis' denial that he owed him a cent; and the assertion that he was "never behind with his commission merchant."

That explanation is as clear as the noon-day sun in the light of facts now known to us, and then known to Joseph E. Davis. It is only remarkable that he did not tell his brother that Mr. Laughlin alluded to the only account on his books with which Mr. Joseph E. Davis had any connection—the Diamond Place account. This it seems would have been natural, instead of allowing his brother to seek an explanation through Mr. Payne.

The letter of C. J. Searles, a member of the firm of Wm. Laughlin & Co., dated May 20, 1850, at Vicksburg, immediately after a visit to Mr. Joseph E. Davis, shows the state of the account of the Diamond Place at that time, and the relation wh ch Mr. Joseph E. Davis bore to it in his own view. It is as follows:

VICKSBURG, May 20, 1850.

Dear Edmund:—I have your esteemed favor per "Cupid." W. L. (Wm. Laughlin) passed up this morning, per Magnolia. I handed him a good lot of drafts. Mr. Davis, after much trouble, gave me $7,000, in two drafts for account o Diamond Place, and expects you to pay them! He at first refused to settle any portion of that account, saying that you must arrange it. Well, it is a tremendous account, and with what you will want will be $30,000, at the end of the season. Mr. Davis said, that of course he was bound for it, but expected you to arrange it. You cannot do it, I know, and the want of his name in arranging the *entire* balance puts us to serious inconvenience, for his name is like gold to us. I can not state anything that I wish to say to you on paper, and you must come up here. Corn is high and rising, and the sooner you come the better. It is useless for me to go into any long details of the things, and things I want so see you about, and

you must come up very soon. I am almost sick to-day, and our town is sickly. We are all well and join in love to you you and yours.

Yours every day,

C. J. SEARLES.

Addressed,

E. C. LAUGHLIN, ESQ.,

Diamond Place.

This letter, punctuated and underscored as printed, tells the tale already made known to us by the accounts. The vast and bountiful generosity of which we have heard so much, comes to this! While acknowledging his responsibility for this enormous account, made by his own drafts in payment of the liabilities which he had assumed, he refuses even to *lend* his name to assist in upholding the friends who were tottering under the burdens which they were bearing *for him*. "After much trouble" he drew two drafts on them for $3500 each, thus giving them his name for *part*, but taking for himself the position of one secondarily liable, where he was in fact primarily responsible.

Thus we perceive that in his dealings he regarded himself as a mere agent for his daughter, and though admitting himself responsible for the repayment of the money advanced to pay the purchase money, not only declined to pay it, but having shuffled it off of his own shoulders on to theirs, refused to help carry it even by the use of his name, except to a small extent, and then with the warning that they must look to his principals for payment.

We are not complaining of this, so far as Mrs. Laughlin was concerned, howsoever heavily it may have fallen on Wm. Laughlin & Co. It was Mrs. Laughlin's debt, as between her and her father, and the bad treatment in this case was not to her. But it makes more conspicuous the idle boast and baseless pretensions set up for him by the defendant; and as

to the still more preposterous claim that he purchased and paid for the property himself, it at the same time refutes and brings it into well merited contempt. But the history of this transaction, so far as it relates to the payment, is not finished. The balance due on the Diamond account, after crediting the crop for that year was some $13,000 Under impending failure, Wm. Laughlin & Co., with laudable desire to save to Mr. Jefferson Davis some $10,000 which he had on deposit with them, transferred it, as Wm. Laughlin wrote Mrs. Jefferson Davis, "to the account of my brother-in-law, Mr. Joseph E. Davis, who, Mr. Laughlin stated owed him, I think, $13,000."

It would seem that any balance due from Mrs. Laughlin after that date was in equity and justice due to Mr. Jefferson Davis. We find, however, that Mr. Joseph E. Davis was indignant that he had been represented as a debtor, and asserted that he was never behind with his commission merchant.

This glittering generality was true in the sense, and with the mental reservation with which he must have asserted it, but far from true in the sense in which his hearers must have understood him, because he had certainly been "far behind with his commission merchants" in the very case under discussion. But the unuttered mental reservation that Mrs. Laughlin was the real debtor and that he had warned Mr. Searles that he expected Mrs. Laughlin's husband to arrange it, produced the confusion, explanation of which had to be sought for elsewhere.

After this we find Mr. Laughlin paid to him through Messrs. Payne & Harrison, $11,304 27. See Mr. Payne's testimony and annexed accounts *supra.*

Having seen how Mr. Jos. E. Davis regarded the purchase of Diamond Place by him, how he looked on the debts due for the purchase money, how he always treated Mrs. Laughlin as the real debtor, as she was, and how he finally imposed the entire burden of assisting her on her husband's brother, let

us see whether he made any sort of pretensions to being the real owner, cotemporaneously with these transactions. We will find he did not. Had he pretended one thing with Wm. Laughlin & Co., and another, the opposite, with his daughter, it would have been consummate hypocrisy.

We shall now examine his correspondence with Mrs. Laughlin touching the execution of a deed which she wanted him to make.

HURRICANE, Sept. 12. 1849.

Dear Florida:—Your letter by Jim of the 9th inst., was duly received. I am sorry to find you so much under the influence of the idle gossip. The opinion of others in such matters as relate to our moral conduct is right to respect. Such as would inquire into the private affairs of others, is entitled to as much respect as is due to the cackling of geese, and we must feel humbled in our own estimation, when we would allow them to exercise an influence on our conduct or affect our happiness.

But to come to the subject of your letter. *I had assured you that by will I had left the Diamond Place to you*, subject to the debt due upon it, which is now about $20,000 now due and *payable to the house of W. Laughlin & Co.* How much more may be incurred in the course of litigation I am unable to say.

I certainly have not interfered in its management except such aid as I could give it and am surprised to hear that Mr. Laughlin felt any apprehension or hesitation from the fear that I would not approve his acts. I expected from his want of experience that he would hesitate and when convenient consult me, for his own advantage, yet in all matters of evident propriety he would not wait for advice.

You ask my opinion upon his return to New Orleans. I am as little able to answer as any one. I suppose his business or interest in the house to be worth more than the pro-

ceeds of the plantation. I did not know his means, or the necessity for his continuance, the probable income of the house, or any other fact to enable me to form any opinion. Now, if Mr. L. has the means, and is so disposed to pay the amount due on the estate, I will, or you may, as the case may be, execute a mortgage to secure him in this advance. I mentioned in former letter to you that from no want of confidence in Mr. L., but from a desire to secure you against any misfortune that even the most prudent are liable to, I thought it best both for your interest as well as his that your property be kept separate. I still think so. I cannot understand your sensibility in the matter. Things are in precisely the same situation they have been for years past. I have interfered no further now than formerly. You, nor any one else, as far as I know thought you could be degraded by the dependence on your father. I expected Mr. Laughlin to exercise all the authority that was necessary and proper for the government of the place, and to act in all respects for your common benefit, and so far as my wishes are concerned, prefer his remaining. The preceeds of the place will require time, patience and economy to pay the debts, and if he could accomplish it at an earlier day by returning to New Orleans, it is a sacrifice you should make for his advantage. But it would not do for you to accompany him before the season of yellow fever is over.

In conclusion, I would say that I have no interest of my own that is to be effected. The interest is yours, and as it is likely to effect you only am I influenced.

I would come up, but some of the family are constantly sick, and the ride is rather a hard one to return the same day. Yet I hope to see you here, if I cannot come up. Send for horses if you are able to come, and bring your friend with you.

Before Mr. Laughlin goes, I wish his deposition in the chancery suit of Guion.

Caroline is sick to-day had a chill and fever. Now if anything further occurs before the arrival of the boat, I will add it.

Affectionately,

YOUR FATHER.

This letter shows that he not only made no such pretensions at that time, but that he probably had not formed the intention of securing the property as his own. It shows that he was "behind" with Wm. Laughlin & Co., on account of the large payments made by them for the purchase money of the place, for he states the amount of the debt at $20,000, and says it is "due and payable to the house of Wm. Laughlin & Co." which the accounts show to be true.

It shows that he recognized her right to the property, subject to its incumbrances.

It shows that he did not pretend to have any interest, but on the contrary expressly disclaimed any, the better to bring Mrs. Laughlin and husband to a state of contentment with his proposal to continue to hold the legal title. There was no talk of a life estate. He refers to the fact that he had "assured you, (Mrs. L.) that by will I had left the Diamond Place to you subject to the debt due upon it."

If this "assurance" had been fulfilled complainant would have at least not been defrauded of her property.

The arrangement which he *assured* her he had made was in substance this: To keep your property separate I will continue to hold the title for you during my life-time, protecting you by conveying it in my will, which I have already done.

He seeks to convince her of the advantage of what he had done and proposed, by arguments founded on considerations of prudence.

Already his feelings toward Mr. E. C. Laughlin had been discovered or suspected by the wife.

In answering this letter, after explaining that he had mistaken her wishes in supposing that it was desired that Mr. Laughlin should have any title, she says:

"We both know that all you propose is for our benefit; nothing can affect that conviction, but others have *imagined* that you withheld the title *from me* because you were afraid to trust him with the management of the place. Might he not, sensitive as he is, even think so too? * * *

"By economy, we can pay the debt, and such economy we will exercise, but then he wishes your unlimited confidence. Mr. Laughlin is too noble and true-minded, too disinterested, to care whether the property was in my name or his in any ordinary case. In *this* he has often said he would only live here, in case it was secured to me, for he takes the same view of them at ter as you do, and thinks it safest to guard as much as possible against misfortunes that can *affect others* as well as ourselves. In my obscure way of writing, I often mislead you with regard to myself. I am always pained to see it, but still more so when I think I have injured, in your good opinion, one so much more deserving, as Edmund is.

May God always bless you and him!

Affectionately your Daughter,

FLORIDA.

In a letter of Oct. 3rd, 1849, dated at Hurricane, addressed to Mr. Laughlin, and elicited by a letter from Mrs. Laughlin received that day, he says:

"I am sorry to perceive a feeling of dissatisfaction with you and Florida, nor can I account for any construction of my letter that implied a want of confidence, certainly none was intended. Your remaining on the place is for the advantage of the place, but I could not request it, as it might interfere with a larger interest elsewhere. I have no motive

but your own interest. I have not ascribed to you any selfish motive or even thought of it.

The disposition I have made of the Diamond Place, you are probably aware of, by a provision of my will. This I think the best for many reasons, and which one of more experience would see. An obvious one is that in the event of the death of one of you, the litigation with the relatives of the survivor should be avoided. If such an event should happen in my life time it would, by this means, but more of this when I see you.".

And thus, though not satisfied, yet deluded by the *assurance* that the title was secured to Mrs. Laughlin even in the contingency of her father's death, they went on paying off the incumbrance of its purchase money.

How the purpose to "keep separate" his daughter's property, by continuing to hold the title of it as long as he should live, finally matured into a still more arbitrary and unjust violation of his trust, is not obscure. We are not left to conjecture. All of the witnesses testify to his increasing prejudice and bitterness against the Laughlins.

Mrs. Davis says: "I also know that Mr. Jos. E. Davis was troubled with the idea that the Laughlins might become heirs of the Diamond Place, in the event of Mrs. Laughlins death." He had become very much embittered against the Laughlins, to such extent that he got angry when they were mentioned." * * I have heard Mr. Jos. E. Davis say that if his daughter Florida should die he supposed there would be an Irish settlement at the Diamond Place, referring to the Laughlins."

The other testimony, including that of his brother Jefferson between whom and himself "existed the strongest bond of affection and mutual confidence," is all to the same effect.

Mrs. Hamer the sister of the defendant, who is called as a witness in his behalf, the most intimate of all with Jos. E.

Davis in the later years of his life, the chief beneficiary of his bounty, testifies:

"He called Mr. Laughlin and family 'low Irish' and said that Mr. Laughlin was in every respect inferior to his daughter, Mrs. Laughlin."

"I have known Mr. Laughlin since I was a small child, and have always been very much attached to him, as he was kind and affectionate to me. I think my grand father's prejudice against Mr. Laughlin was because he considered him my Aunt's inferior intellectually and my grand father was very proud of his daughter and mortified and disappointed in her marriage. If there were other reasons I do not know or do not remember them."

They all assign the same cause. This unreasonable prejudice was not for want of moral worth, or gentle and refined manner, or dignity of character and uprightness, all of which he possesses, but on account of "a lower estimate" of his intellect.

It is this which brought him at length to the determination that the Laughlins should not acquire the property of his daughter by inheritance or devise.

To accomplish this purpose he had prepared for execution the lease, and when his daughter came to see him, having heard of his sickness, he had her to send for her husband, E. C. Laughlin, by E. C. Laughlin, Jr., who had brought her there. He had not told her of his benevolent purposes, as it seems natural that a father intending to make so great a gift would have done, unless, indeed, he reserved the secret to enjoy the pleasure of surprising her by the munificence of his generous bounty!

It is unnecessary to repeat the averments of the bill touching the execution of this document. (See p. 12.) They are fully substantiated by Mr. Laughlin and abundantly corroborated by other witnesses testifying to cotemporaneous acts,

and words, parts of the *res gestæ*, and letters written before and subsequent to the transaction. These latter have preserved in less perishable form than human memory the indubitable proof that the lease was neither intended by the father nor accepted by the daughter as a bounty. The latter, showing to the persons who were around her in the daily walks of life, that grievous distress of mind, consequent on her disappointment and deep sense of the injustice which her father had done her, expressed to him, in no doubtful terms, yet in respectful—nay, in the tender and pathetic language of affection, her own view of his conduct.

The execution of the lease, which is dated Dec. 27, 1858, was followed almost immediately by a letter of remonstrance from Mrs. Laughlin, as is evidenced by the reply of Jos. E. Davis dated, January 4. 1859. He had then accomplished his purpose, and he wrote as he had never done before, claiming it as the earnings of *his labor!* This is the letter.

HURRICANE, January 4, 1859.

"I am sorry to receive such a letter from you, my dear child.

You write as if I had deprived you of something that was yours, and speak of your being made a tenant at will. Now, it is exactly what the deed is intended to prevent. There is nothing now to prevent my putting an overseer on the place, or to prevent my executors from doing the same thing. If you think your situation is to be bettered you may return the deed. I will leave you in possession of the house and garden and appurtenances, with an income.

As to statement of account much of it has no relation to my purchase—the Guion debt and the Jacob's debt. But you will recollect that nothing has been paid but from the proceeds of the place, which is mine. I leave you in the full enjoyment of the income for life. Now, who has the right to

dispose of the earnings of his labor. I very much regret any feeling of the kind, and would still more regret any publicity, by taking possession of the place, or exercising authority over it, but it seems no generosity nor line of conduct is satisfactory. YOUR FATHER."

This letter, it is claimed, gave Mrs. Laughlin the *option* to return the deed. It did. It told her she might do so. But it was not an offer prompted by a returning sense of justice, and a determination to the fealty of a broken trust. It was an offer which said, you *may*, but do it if you dare. It was an offer accompanied with a cruel threat, pointing out the punishment which would follow, and not neglecting to remind her of the mortification which she would suffer in its publicity. Neither did he omit reference to the vantage ground which he occupied as holder of the legal title. Thus spoke the trustee to the *cestui que trust*. Thus spoke the lawyer to his client. If you have paid the purchase money you will recollect that it was with the proceeds of the place which is mine. This was a sophism which could not have been imposed, except by a *lawyer* and a *client*, the latter ignorant of the supposed intricacies and quirks of the law, and knowing that the former was skilled in its learning. By this sophistry the "earnings of his labor" might have been extended indefinitely, limited only by the opportun ties of buying property on credit and re-selling on credit. The "proceeds of the place" would pay the purchase money to *his vendor*, but *he* could not be paid with the same money, because if paid ten times over, it was the proceeds of his place and the "earnings of his labor." He concludes his letter by reference to the act complained of

by his daughter as depriving her of *her own*, as being in his view "generosity of conduct."

The great Roman orator in his book *De officiis*, said:

"*Totius autem injustitiae nulla capitalior est quam eorum, qui, cum maxime fallunt, id agunt, ut viri boni esse videantur.*"

This lease has peculiarities worthy of observation. It is dated Dec. 27, 1858, and recites that Joseph E. Davis, "for and in consideration of the natural love and affection he has for his daughter, the said Florida, and the sum of one hundred dollars in hand paid, etc., he leases the property:

"To have and to hold the said plantation and slaves, and their increase, and the other personal property unto the said party of the second part for and during the natural life of the said Florida Laughlin, and the said party of the second part, covenant and agree with the first part, his heirs, executors and administrators, that they will manage the said plantation and slaves in a proper and husband-like manner, and at the termination of this lease will quietly surrender the said plantation and slaves and their increase, and the other above named personal property or so much thereof as may be then remaining, unto the said party of the first part, his heirs, executors, administrators and assigns, in as good condition as the same now is, natural wear and tear and unavoidable accidents excepted. It being hereby acknowledged that the sole legal and equitable title, in and to said plantation and slaves and other property, is in the said party of the first part, and the right of property in him.

In witness whereof, the said parties have hereunto set their hands and seals this day and year first above written.

F. W. DAMUS,	J. E. DAVIS, [Seal.]
T. G. CUNNINGHAM,	FLORIDA LAUGHLIN, [Seal.]
T. C. SEDYARD,	E. C. LAUGHLIN. [Seal.]

This deed was afterwards, viz: On May 31, 1859, acknowledged by the parties of the second part but not *by the grantor*, and recorded on the same day.

In the light of the facts the object of this instrument of professed bounty is too obvious to require mention.

Its formal acknowledgement "that the sole legal and equitable title in said plantation and slaves and other property is in the said party of the first part, and the right of property in him," is the only *bounty* in it, and that went in the wrong direction.

Its acknowledgement by the grantees instead of by the grantor before a magistrate, was wholly inconsistent with the *professions* but not with the *real purposes* of this deed. As it was so constituted as to have a remarkable double back action, all of the performances connected with it were also backward.

An instrument in the form of a lease was doubtless selected because of its well known properties of estoppel. In popular estimation, and it may be added in the first view of it by those in the profession, a lease is a powerful engine in the way of estoppel, the most efficient reagent in the laboratory of the law for the accomplishment of this wonderful piece of legerdemain, *the reversal of irreversible facts*!

But we beg to call attention to the sayings of some wise common sense judges on the subject of such leases, followed by the statements of the principles by which chancellors sweep away like cobwebs all sorts of instruments with their solemn seals and other mockeries of formality and solemnity by which fraud seeks to fortify itself in the places where it is ensconced.

Estoppel by Lease.

"The rule has its exception: for instance, when there has been any fraud or misrepresentations used to induce one already in possession of land to accept a lease, the lessee is not bound by the rule. Smith on Landlord and Tenant, 295.

Gleim vs. Rise, 6 Watts, 45.

"The distinction is between a case where a lessor was in possession, and a lessee obtained possession under him, and a case where the person in possession did not obtain it from him,

who, under some false pretence, obtained the position of lessor. In the first case the lessee cannot object to the title of him who put him into possession; in the latter he will be permitted to prove the imposition. If he does prove it he is not bound to give up possession, nor is he liable for use and occupation.

Hall vs. Benner, 1 Penn., 407.

"A lease doth properly signify a demise or letting of land unto another for a lesser time than he that doth let it hath in it.

Shep Touch 266; Plow. 421–432.

"Assuming the above authorities to be law, it would seem to be very clear, that a man cannot make a valid lease to another who is in possession of land, when such lessor has no interest, title, possession, or right of possession in the premises he lets.

"The tenant, under a lease made by such a lessor should never be estopped from disputing his landlord's title. To a tenant so circumstanced, the doctrine of estoppel is totally inapplicable, etc. Whart. Dig. 365, pl. 405; 1 Dall. 65, 10; Serg. & Rawle, 268; Hockenbury vs. Snyder, 2 W. & S., 240; Baskin vs. Seechrist, 6 Barr, 163. Speaking of estoppel by leave—"But the exception is as well established as the rule itself, that where the tenant is induced to accept the lease by the employment of trick, the suggestion of falsehood, or the use of undue promises or threats, such acceptance will not clear his mantle against the assertion of a title superior to that residing in the lessor. * * * But the exception is more stringently applicable where he who is improperly prevailed on to attorn as tenant, is in the peaceable occupancy of the land, etc." * * * In reference to such a position, it has been observed that if any one having no right induces him in possession to become tenant, it *must be* the result of misrepresentation of law, or fact, or both; and it will require

but *slight proof* to dissolve the relation of landlord and tenant." * * * * *

"And, I take it, it matters not whether the deception practiced originates in voluntary falsehood or in simple mistake, for the immunity it confers springs not so much from the fraud of the usurper, as from the wrong which the deception would otherwise work on the rights of the lessee. See also

Miller vs. McBrier, 14 Serg. & R., 382.

Hamilton vs. Marsden, 6 Birm., 45.

Thayer vs. United Brethren, 8 *Harris* 60.

After stating estoppel against one entering under lease. "But if the lessee were in possession at the time the lease was executed, he may resist recovery by proving that he accepted the lease by mistake &c." * * This is allowed because the landlord, if he fails, is not in a worse condition than he was before the lease." See also

2 John. Ca. 353.

Taylor's Landlord and Ten.. p. 546, §705, 707.

The following are quoted and cited to show the utter futility of instruments exacted by persons holding relations which give them unequal advantage or undue influence. It will be seen that the "*bounty*" in this lease proceeded from the daughter to the father, from the *client* to the *lawyer*, from the *cestui que trust* to the *trustee*.

Undue Influence.

The following quotations are from the notes of Huguenin vs. Beasely, in Leading Cases in Equity:

1. "In many cases the court, from the relations existing between the parties to the transaction, infers the probability of undue influence having been exerted. And in such cases the court watches the whole transaction with great jealousy, not merely for the purpose of ascertaining that the person likely to be so influenced fully understood the act he was performing, but also for the purpose of ascertaining that his consent to

perform that act was not obtained by reason of the influence possessed by the person receiving the benefit; not that the influence itself, flowing from such relations, is either blamed or discountenanced by the court; on the contrary, the due exercise of it is considered useful and advantageous to society; but this court holds, as an inseparable condition, that this influence should be exerted for the benefit of the person subject to it, and not for the advantage of the person possessing it."

Hogton vs. Hogton, 15 Beav., 299; and see
Cooke vs. Lamotte, ib., 234.

As to the Relation of Parent and Child.

2. "Courts of equity, although there is no very great evidence of undue influence, will always look with a jealous eye upon donations from a child to a parent, especially where the child has just come of age, and will set them aside if any advantage has been taken by means of the exercise of parental authority.

Cocking vs. Pratt, 1 ves., 401:
Baker vs. Bradley, 2 Sm. & Giff., 531.
7 De C. Mac. & G. 597.
Wright vs. Vanderplank, 2 K. & J., 1.
8 De G. Mac. & G., 133.
Potts vs. Burr, 34 Beav., 543, 552.
Davies vs. Davies. 4 Giff., 417,
King vs. King, 3 Jur. N. S., 609, 611.
Chambers vs. Crabbe, 34. Beav., 457.

3. "It is well settled that when a son or daughter has just come of age, and is subject to the parental control and influence, there is not only a confidential relation, but ground for an inference that a power existed which the parent could not legitimately exercise except for the good of the child, and a court of equity will, therefore, unhesitatingly set aside any gift or contract to which both are parties, and

by which the child's position is changed in any material regard for the worse.

Bergen vs. Udall, 31 Barb., 9.

Taylor vs. Taylor, 8 Howard, 183.

4. "But the burden of proof is throughout on the parent, and he must show not only that the child was not unduly influenced, but that he thoroughly understood what he was doing which will not be inferred from evidence that he heard or read the provisions of the instrument, unless their actual and prospective bearing was fully explained, or they are so plain and obvious as to speak for themselves; see Houghton vs. Houghton, 15 Beavan, 270; Greenfield's estate, 2 Harris, 489, 507. It is more eminently a case for the application of Lord Eldron's doctrine that the question is not merely whether the donor knew what he was doing, *but how the intention was produced;* Berger vs. Udall, 13 Barb., 9, 340; ante 1167; Huguenin vs. Baseley, 14 Ves. 273, also Leading Cases in Equity, p. 1165. Lord Chancellor Eldon: "With regard to the interests of the wife and children of the defendant, there was no personal interference upon their part in the transactions that have produced this suit. If, therefore, their estates are to be taken from them, that relief must be given with the reference to the conduct of other persons; and I should regret that any doubt could be entertained, whether it is not competent to a court of equity to take away from third persons the benefits which they have derived from the fraud, imposition, or undue influence of others. The case of Bridgeman vs. Green, 2 Ves., 627, is an express authority, that it is within the reach of the principles of this court, to declare that interests so gained by third persons, cannot possibly be held by them; and Lord Hardwick observes justly, that if a person could get out of the reach of the doctrine and principle of this court, by giving interests to third persons, instead of reserving them to himself, it would be almost impossible to

ever reach a case of fraud. In that instance, therefore, the interest of the son was considered as capable as being affected by the decree as the interest of the father. The case afterwards came before the Lord Commissioners; and Lord Chief Justice Wilmot expressed himself thus:

5. "There is no pretense that Green's brother, or his wife, was party to any imposition, or had any due or undue influence over the plaintiff; but does it follow from thence that they must keep the money? No. Whoever receives it must take it tainted and infected with the undue influence and imposition of the person procuring the gift: His partitioning and cantoning it out amongst his relatives and friends, will not purify the gift, and protect it against the equity of the person imposed upon. Let the hand receiving it be ever so chaste, yet, if it comes through a polluted channel, the obligation of restitution will follow it.

Bridgman vs. Green, Wilm., 58, 64;
S. C., 2. Ves., 627, and see
Goddard vs. Carlisle, 9 Price, 169;
Schoolfield vs. Templer, Johns., 155;
Smith vs. Kay, 7 Ho., L. Ca., 750.

6. "On the other hand, when the child's position is altered for the worse, while the parent is unduly benefitted, the onus is on the latter, and it will not be enough for him to show that the instrument was read to the child. and executed by the latter without objection, unless it also appears that he had a disinterested adviser, who was competent to explain the legal effect and consequences of the deed.

Houghton vs. Houghton, 15 Beavan, 278.

7. "In Slocum vs. Marshall, 2 W. C. C. R. 397, a daughter conveyed the reversion in a tract of land to her father, who was the tenant for life. She resided in his house at the time, and was about to be married, but the grant which was alleged to have been made on the faith of an oral declaration of trust

was not made known to her intended husband. Washington, J., said, "that the trust could not be proved as such, consistently with the statute, but that it was, notwithstanding, clear under the evidence, that the daughter had been impressed with the belief that the conveyance would promote her interests, and not less clear than prejudicial. Such transactions were viewed with jealously by a court of equity, and the one in question must be set aside, although there was no reason for supposing that the father intended a fraud, or had any other than a fair intention, which he had been prevented from carrying out, by death.

8. "It was held in like manner in Bergen vs. Udall, 31 Barb. 9, that where a daughter, immediately upon her arrival at lawful age, makes a volutary conveyance for the benefit of her father, the transaction will be examined with the most jealous scrutiny, and the person relying upon the conveyance must show affirmatively, not only that she understood its nature and effect, and executed it voluntarily, but that her intention did not result from misrepresentation or mistake, or from the parental control and influence.

Boyd vs. Boyd, 16 P. F Smith, 283, 293.

9. "Near Relatives.—The principle is the same when the members of a family are so placed that one of them stands in *loco parentis* to another, or can exercise a controlling power over him; Long vs. Mulford, 17 Ohio, N. S. 484, 502. Moreover, if the relation between persons who are of the same blood, is not necessarily one of confidence, it may readily acquire that character, when they are dealing with property inherited from a parent or common ancestor. They are consequently under a mutual obligation not merely to say or do nothing that is calculated to mislead, but to give such counsel as would presumably proceed from a third person who was equally concerned for all; Ante, Brock vs. Berry, 2 Gill., 83, 103; Hunt vs. Hunt, 2 Beasely, 161; Dunnage vs.

White, Swanston, 138; Haney vs. Mast, 8 Beavan, 439, Coutts vs. Ackworth, 8 Eq. L. R. 558; Long vs. Long, 9 Maryland, 461; Todd vs. Grove, 33 Id. 183, Sears vs. Shafer, 2 Selden, 272; Dunn vs. Chambers, 4 Barb., 376, 381; Stewart vs. Stewart, 7 J. J. Marshall, 183; Rutherford vs. Huff, 4 Desaussure, 350; Kennedy vs. Kennedy, 2 Ala., 571; Boney vs. Hollingsworth, 23 Id. 690; Doughty vs. Doughty, 3 Halstead, 227, 292; Gordon vs. Gordon, 3 Swanston, 400; Long vs. Mulford, 17 Ohio, N. S. 484, 504; see vol. 1, 252. It is not enough under these circumstances to aver that the proposition came from the complainant, if it was one which the respondent should have rejected from a sense of propriety and justice; Kennedy vs. Kennedy. 2 Alabama, 571; M'Cant vs. Bee, 1 M'Cord ch. 383; Doughty vs. Doughty; Dunn vs. Chambers. "The double relationship, in the case last cited which the parties bore to each other as kinsmen and joint recipients of their grand fathers bounty, should have prompted the defendant, instead of profiting by the recklessness and improvidence of his cousin, to take measures more effectually to secure the property for his benefit."

10. "In Sears v. Shafer, 2 Selden, 268, a father gave a pecuniary bequest to his daughter, and devised his real estate to his sons without words of inheritance. They induced their sister to release her reversionary interest without consideration, and the instrument was set aside after the lapse of twenty-six years, at the instance of her children, it appearing that she was in feeble health at the time, and had died soon afterwards. Gridley, J., said: "The relation which the Shafers, who procured the execution of the release, bore to Elizabeth Sears, was that of brothers. They were executors of their father's will and the trustees of the legacy bequeathed to her, and were the habitual and confidential advisers of their sister, who was then a widow and in ill health. It is scarcely possible to imagine a more intimate and influential position than that

held by Daniel, one of the brothers, towards his sister at the time when the release was executed. She was accustomed to rely on his advice in all her business matters, and to follow it implicitly. This influence on the one side, and a yielding compliance on the other, was increased by the circumstances in which Mrs. Sears was placed during the last part of her life."

11. "In requiring this, courts of equity act irrespective of any admixture of deceit, imposition, over-reaching, or other positive fraud. As it has often been said, the principle stands independently of such elements of active mischief. It is founded upon a motive of general policy, and is designed to protect a party, so far as may be, against his own over-weening confidence and self-delusion, the infirmities of a hasty judgment, and even the impulses of a too sanguine temperament. It has been beneficially applied to those confidences which owe their birth to the relation of parent and child, guardian and ward, trustee and *cestui que trust*, and above all, attorney and client To guard against the strong influences which these connections are so apt to originate, the law not only watches over the transactions of the parties with great and jealous scrutiny, but it often declares transactions absolutely void, which between other parties, would be open to no exception. This is emphatically true of the relation of client and attorney, and to persons standing in a situation as *quasi guardians*, or confidential advisers. Many of the cases establish the doctrine that, while these connections exist in full vigor, the adviser shall take no benefit to himself, from contracts or other negotiations with the advised; Hatch vs. Hatch, 9 Ves., 297; Wood vs. Downes, 18 Ves., 126: De Montmorency vs. Devereux, 7 Clark and Finnelly, 188; a doctrine intended to supercede the necessity of any inquiry into the means used or the exer-

tion or influence in any particular case, which is often difficult if not impossible from the very nature of things.

Welles vs. Middleton, 1 Cox., R., 125.
Wright vs. Proud, 13 Ves., 137.

12. "A judicious writer on this subject has observed, that equity does not so much consider the bearing and hardship of this doctrine upon particular cases, as it does the importance of preventing a general public mischief, which may be brought about by means secret and inaccessible to judicial scrutiny, from the dangerous influence arising from the confidential relation of the parties.

1 Story Eq., Sec. 311.
Morse vs. Royal, 12 Ves., 375.

13. "Principal and Agent.--The relation of principal and agent is akin to that of attorney and client, and like it, implies the existence of a confidence which renders it incumbent on the agent to show that this power was not abused:

Brooke vs. Berry, 2 Gill. 83, 103.
Condit vs. Blackwell, 7 C. E. Green, 481.
Brown vs. Post, 1 Hun. 304.
Todd vs. Grove, 33 Maryland, 183.
Persh vs. Quigleg, 7 P. F. Smith, 247, 273.
Comstock vs. Comstock, 57 Barb. 473.
Uhlrick vs. Mulke, 60 Ill., 230.

14. "Trustee and *cestui qui trust.*—Although a trustee is not precluded from purchasing the property which has been confided to his care from the *cestui qui trust*, such transactions are rigorously scrutinized, and will be set aside, unless they are shown to be entirely fair, and for a full and adequate consideration; see McCant vs. Bee, 1 McCord Ch. 383; Crocker vs. Pierce, 61 Maine 58; Dennis vs. McCagg, 32 Ill., 429; Buell vs. Buckingham, 16 Iowa, 284; Coffee vs. Ruffin, 4 Cold-

well, 427; Pairo vs. Vickey, 37 Md., 467; Smith vs Townsend, 27 Id., 388. It is accordingly well settled that "to support a purchase of the trust estate by a trustee from the *cestui que trust*, it must appear that the trustee thoroughly divested himself of that character in the transaction, and entered into a new and distinct contract with the *cestui qui trust*, that person having the fullest information on every subject." There must be no fraud, no concealment, no advantage taken by the trustee of information acquired by him in that character; Smith vs. Townsend, 27 Md., 388. For like reason the court will not suffer a settlement or compromise between a trustee and *cestui qui trust* to stand unless it appears to be fair and adequate; McCant vs. Bee; Crocker vs Pierce 57 Maine, 68.

"This rule applies not only to trustees in the strict and technical sense of the term, but to assignees and commissioners in bankruptcy, executors, etc. In short, to everyone who holds the property of another, or property in which another is interested, and is under an obligation to manage it for him, or apply it for his use; Vol. 1, 226. See McCant vs. Bee.

15. "A grant or contract obtained by fraud or undue influence is invalid, not only between the parties' but as it regards third persons. One who knowingly profits by a wrong becomes *particeps criminis*, however innocent he may have been in the first instance. If A, by any of the forms of imposition induces B to bestow his property on C, the latter cannot enforce the gift although he took no part in the means by which it was procured. Whelan vs. Whelan, 3 Cowen, 537; Irvin vs. M'Keen, 3 Wharton, 347; Gordon vs. M'Carty, Ib 407. In Gordon vs. M'Carty, a surety was not allowed to set up a release that had been procured by a fraud to which he was not privy: and where an assignment for the benefit of creditors contained a fraudulent provision, that the fund should be appropriated in the first instance, to the payment of an alleged debt to one who had no claim against the assignor, the court

set the whole aside; Irvin vs. Keen; and it may be said in general that no one, be he near or remote, can justly found a claim of title on a voluntary instrument which is not the well understood act of the donor's mind.

Cook vs. Lamotte, Russells appeal, 25 P. F. Smith, 265: ante 1189.
Whelan vs. Whelan.
Dabney vs Cockburn, 1 Mer., 644.
Bennett vs. Wade, 1 Dickens, 84.

As to the Relation of Legal Adviser and Client.

16. "Courts of Equity have always acted strictly up to this rule, that a solicitor can, by act *inter vives*, take nothing for his own benefit from his client pending a suit, save his demand, or indeed at any time while the connection between them subsists, with the influence attending it: for though the transaction be as righteous as ever was carried on, it is the settled law that the connection must, as in the case of guardian and ward, be *bona fide* dissolved before he can take anything beyond his regular fees."

Proof vs. Hines, Ca. T. Talb., 116;
Walmesley vs. Booth, 2 Atk., 25.
Draper's Company vs. Davis, 2 Atk., 295.
Oldham vs. Hand, 2 Ves., 259.
Welles vs. Middleton, 1 Cox, 112.
44 Bro. P. C. 245.
Newman vs. Payne, 2 Ves., Jun., 199.
Hatch vs. Hatch, 9 Ves., 296.
Wood vs. Downes, 18 Ves., 120.
Strachan vs. Brandon, there cited, p. 127.
Moore vs. Prance, 9 Hare, 299.
Re Ingel, 21 Beav., 275.
Walker vs. Smith, 29 Beav., 394.
Re Holmes Estate, 3 Giff., 337.
O'Brien vs. Lewis, 4 Giff., 221.

32 L. J. N. S., (Ch.) 665.
Gardener vs. Ennor, 35 Beav., 549: and see
Osmond vs. Fitzroy, 3 P. Wms., 129. and note.
Bridgman vs. Green, 2 Ves., 627.
Wilm. 58.
Norton vs. Relly, 2 Edn., 286.
Wright vs. Proud 13 Ves. 136.
Purcell vs. McNamara, 14 Ves., 91.
Collins vs. Hare, 1 Dow & C., 139.
Cooke vs. Lamotte, 15 Beav., 234.
Wilkinson vs. Fowkes, 9 Hare, 592.
Constance vs. Cunningham, 13 Beav., 303.
King vs. Smith, 21 Beav. 522.

17. "Much more may be required where one accepts a benefaction from another, who is subject to his control or influence, and it may then be incumbent on the donee to show that he did not induce or prompt the act, and that it was the spontaneous and unforced growth of the donors mind. If such evidence be not adduced, and the gift is out of proportion of the givers means, or will be prejudicial to those who have a paramout claim on his bounty, a chancellor will infer that it is the result of undue influence, although there may be no direct proof. See

Brook vs. Berry, 2 Gill., 83, 100.
Rhodes vs. Bate, 1 Ch., Appeals 252, 261.
Greenfields Estate, 2 Harris, 489, 506
Dunn vs. Chambers, 4 Barb., 376.
Sears vs. Shafer, 2 Seldon, 272.
Casborne vs. Barham, 2 Beavan, 75,
Bergen vs. Undall, 31 Barb., 9, 34.
Mason vs. Ring., 3 Abbott App., Dec., 211.
Lee vs. Pearce, 68 North Carolina, 76.
Conant vs. Jackson, 16 Vermont, 335, 350
Long vs Mulford, 17 Ohio, N. S. 484, 505.

18. "The principle runs through all the various relations, where from disparity of years, intellect or knowledge, one of the parties to the contract has an ascendancy, which prevents the other from exercising an unbiassed judgment. It may therefore, apply as between parent and child, guardian and ward, husband and wife, counsel and client, and finally where a spiritual pastor, or direetor, is dealing with a member of his flock or congregation, whom he has taken peculiarly in charge. See

Marsh vs. Tyrell, 2 Haggard, 187, 186.
Houghton vs. Houghton, 15 Beavan, 278, 299.
Todd vs. Grove.
Rockafellow vs. Newland, 57 Illinois, 186, 195.
Garvin vs. Williams, 44 Missouri, 465.

Ratification.

19. "It is, nevertheless, essential to the validity of such a ratification that the undue influence should have ceased, and that the complainant should be cognizant of his rights, and that he might avoid the act which he adopts; Bergen vs Udall 31 Barb, 9, 33; Boyd vs. Hawkins, 2 Dev. Eq., 215; McCormick vs. Malins, 5 Blackford 509; Fisk vs. Miller, 1 Hoffman Ch., 267, 281; Long vs. Mulford, 17 Ohio, N. C. 484, 500. In the absence of proof, the presumption is that the relations of the parties are unchanged, and that the confirmation is due to the cause that induced the original transaction. It should not, moreover, be taken for granted, that one who has executed a formal instrument knows that the doors of a court of equity stand open for his relief, and it is on the contrary more reasonable to suppose that he regarded the original contract as constituting an obligation from which there was no escape; See Butler vs. Haskell, 4 Desaussure, 651, 696. In this case, the chancellor cited and relied on the English authorities as establishing, that to render the confirmation valid,

it must appear that the claimant was free from the necessity, overbearing influence, or blind confidence which induced the original agreement; that he was aware that he was not bound by it, but might be relieved; and nevertheless chose deliberately to abide by what he had done in the first instance; See Murray vs. Palmer, 2 Schoales & Lefroy, 474; Ardglass vs. Muschamp, 1 Vernon, 117; Deloraine vs. Brown, Ib. 633; McCant vs. Bee, 1 McCord Ch. 483; Crow vs. Ballard, 3 Beavan, 237., or as the principle has been elsewhere stated he must not only be acquainted with the facts, but aware how those facts would be dealt with, if brought before a court of equity; the Hoffman Steam Coal Company vs. the Cumberland Coal Co., 16 Md. 456; the Cumberland Co. vs. Sherman, 20 Id. 117; Pairo vs. Vickery, 37 Id., 469, 687, Vol. 1, 237.

Lapse of Time.

20. "But the bar is not an inflexible one, like that arising from the statute of limitations; and where the party is not emancipated from the undue influence during his life, or has not sufficient time to institute legal proceedings, and the right descends at his death on his infant heirs, the court may in the exercise of a just discretion afford relief after twenty-one years, or a greater lapse of time; Sears vs. Shafer, 2 Selden, 268, 275; Long vs. Mumford, 17 Ohio, N. S. 484, 508. And it is not less true of acquiescence than it is of confirmation, that the defense will not avail, unless that the party knew that he was injured, and that he might have a remedy; Sears vs. Shaffer; Fisk vs. Miller, 1 Hoffman Ch., 267, 281; Long vs. Mulford; Pairo vs. Vickery, 37 Md., 447, 489."

A letter written by Mrs. Laughlin to her father January 3, 1858, inclosing "a statement of the sums paid by Diamond Place for her redemption," speaks of the debt as one thorough-

ly understood between them. It is entirely evident, however, that Mrs. Laughlin was in total ignorance of the true state of the account. The additional sums "incurred in the course of litigation," doubtless remained unknown quantities. We have already seen what were the amounts and when, how and by whom paid.

It is also evident from this letter that Mrs. Laughlin had become distrustful of the intention of her father in respect to her property. In making a touching appeal to him she makes delicate allusion to the three things which she knew to be potent in influencing her father to withhold from her that which she had paid for. She uses, in closing this letter, the following language:

"Papa, I have lived the best years of a somewhat saddened life on this place; my love, my time, my taste, have all been exercised in beautifying it. It is one of the blessings God gave me in lieu of loving children. Can you imagine, you who are so much calmer, and colder, the blow you inflict upon me by wishing to make me a mere tenant at will, and taking from me all further interest in my old, dear home, and causing your heirs to look upon me as an interloper, who lives too long? For you it may be well; for me, I know that God will not leave me quite desolate, if I try to do right. I have not thought much of money except sometimes to give a little for books and flowers, or what was pleasanter for me than even them, to make a sad heart lighter. I did not wish that or anything from you, but what little love you could spare me from others. I felt *secure in your sense of justice*, and never dreamed that you could, so soon as my body was cold, wish to turn upon the world the husband who loves and protects me, or the orphan children I sheltered in my heart and home, for the sake of those who are nothing to me, and may one day prove nothing to you.

I did not marry an extraordinary genius it is true, but my husband is above most men in purity of purpose, uprightness in dealing and tenderness of heart. No distrust, implied or spoken, can do anything but draw me nearer to him. I only trust that all those in whom you are now so deeply interested may show themselves as worthy of your esteem. Please let me hear from you, as soon as convenient, your decision in regard to the subject of this letter. I hope you are constantly improving in health.

Farewell,

Your Daughter,

FLORIDA D. LAUGHLIN.

P. S.—If you prefer we can give you a New Orleans acceptance for the balance due you, payable next fall,

Certainly the foregoing letter does not give any support to the idea that she voluntarily accepted the provisions of the lease in lieu of her property.

There never has been an hour, since it was known to the complainant that her father had violated his trust and taken away from her, or attempted to do so, that which he had kept under the pretense that he did so merely to keep her property "separate" and to secure her "against any misfortune that even the most prudent are liable to." There never has been an hour in which she yielded assent to the act except involuntarily, as something she could not prevent.

On page 15, of the bill, is a statement relating to a suggestion made by Jos. E. Davis to Mr. E. C. Laughlin that the latter should purchase the property, *See bill page* 15.

The following letter indicates an apprehension that the gross injustice which he had done his daughter might lead to an effort for relief after his death, in spite of his well considered device for estopping it. Whether that, or a desire to secure another acknowledgment of his paramount title influenced him

cannot easily be determined, nor is it important to do so. We have seen how easily such evidences will be brushed away. This is his letter:

VICKSBURG, MISS., Jan. 25th, 1869.

My Dear Daughter:

Your letter by Jeff Laughlin has just been receiv ed, in which you request an immediate answer. In my suggestion to Mr. Laughlin I was influenced by the consideration that in the course of nature my life was drawing to a close, and the propriety of having all the affairs of this life so arranged as to have no difficulty with others, in settling my affairs after I was gone. It is unpleasant to have business affairs with our relations.

I wish to make the terms as easy and satisfactory as they can be made. Before the war I considered the place worth one hundred dollars per acre—that price I refused for the Hurricane, and since sold it to B. Montgomery and sons, for seventy-five dollars per acre, on a credit of nine years, they paying interest of six per cent. in coin. I suppose that the Diamond Place would be worth half of what it was before the war. I know it is the best place in Mississippi of its extent. I wish to make the terms easy, as I wish the family to continue the owners. I should be pleased to hear any suggestions from you and Mr. L., and after due consideration of the matter, it might be well for you to come up, as I should be very glad to see you, apart from business matters. We are all in our usual health—Lize very much occupied with her opera.

I have found Home Studies of the Bible interesting and instructive, and have furnished the evenings reading since you sent them to me, and have felt ready to say, with Agrippa, *"thou almost persuadest me."*

With affectionate regard,

YOUR FATHER.

P. S.—I notice in your letter the remark that I need not anticipate any objection or opposition from you. I was very far from supposing there could be any, but on the contrary suppose that it would be entirely in accordance with your wishes, as your rights would not be affected.

This letter was followed by a prompt answer from Mrs. Laughlin, dated January 29th, 1869, as follows:

DIAMOND PLACE January 29th, '69.

Dear Papa:—

I read with painful surprise your reply to my letter with regard to the purchase of the place. The terms you propose being such as are so far beyond any possibility of our meeting, I must suppose you did not wish us to become its owners. It appears to me that no one in his senses would for a moment, think of giving sixty thousand dollars for a place, that twenty years ago, when twice as valuable both by levees and negroes, sold for twenty-eight thousand.

I cannot understand, Papa, how it is that you have seemed to wish that all and every other relation should be enriched either at my expense, or with a perfect indifference to my feelings. I cannot see why Dr. Mitchell's family, even those who have no more claim on you than other distant connections, should prove always the principal and favorite recipients of your favors. It may be right, it may be natural or consistent, but I have neither the brains or heart to comprehend it.

The Adams Place, as fine a one for all planting purposes, is offerd for sale to Maj. Barr for seventeen thousand dollars, by the family. I believe the proposal will be accepted.

It has been one of my fondest wishes to have a right to be buried here, which of course is now impossible. I should not like for the sake of any family, to see my husband a drudge

the remainder of his life, nor feel that when I die his interest here, dies with me; but there seems no other alternative, unless he uses his slender means in the purchase of a home somewhere else and leases out this. I have no other interest nor wish any that is not bound up with his. Of course, as the place is yours, you can dispose of it as you will; but papa it appears to me that I should prefer when my eyes are closing on this life, to have made some heart into whom my own flowed, happy, than to have rendered remoter ones rich. You are the judge; I have no more to add, except that I hope God will bless you here and hereafter, which is the best—the *only best* which can come to any one.

Farewell,

As ever your affectionate daughter,

FLORIDA.

Again on Feb'y 12th, she writes a letter full of tender affection and remorse that she had written him as she had done in her last.

DIAMOND PLACE, Feb 12th, 1869.

Dear Papa—

I have been very much pained by the thought, that I had imposed upon yon the necessity of writing, a habit, I was aware that you had sometime ago, abandoned. I am the more sorry, inasmuch as you were not well. I hope you will forgive my unintentional fault.

In reference to Dr. Mitchell's family, for whom I have never entertained any but kindly feelings, especially toward my sister's childen, who have ever been tenderly regarded by me; I think also, by all in whom I have any interest. I had heard however, that in your *will*, you had assigned this place to Jo. Mitchell; and as I hardly suppose any woman would like to know that at her death, her husband would be dispossessed in favor of any other relative, however near or dear, I could not but be hurt. It has been Mr. Laughlin's

dearest wish, to purchase the home so long endeared to us. When your proposition was made and he had a hope that the terms would not prove beyond any prospect of fulfilment, it was to us both a very great gratification, but, papa, there is not a possession on earth, that would atone to me, if it had cost you a moment's pain. I know you will believe this, as my whole life has shown its truth.

I may be morbid in feeling; may often err in judgment and true knowledge, but not because I fail to find the true source and issue of both. One, even of an imaginative and sensitive nature, can scarcely have lived to my years without some sort of chart or rule of life by which to judge themselves and others. Mine may, I often think it has been, untrustworthy, but it was the best I could find. Somewhere, papa, we shall find one better defined, and on my part more perfectly followed; but not yet, not here.

I have you in my prayers always, and should the night fall first on the one or the other, let us try to be ready for it. It is the only hope for you, the only one for me, for us all. I think in one thing at least, I can from the depths of my soul say, "I have coveted no man's silver or gold or apparel;" but I have coveted what is of far greater value, an undistrusted, undistrustful affection.

Papa, do not consider all this mere morbid feeling. It is the cry of every human heart, that longs to do right, and yet not live quite alone. I should have written by Jeff yesterday, but did not know in time that he was leaving. I had a kind letter from Cousin Hugh lately. He is busy with contracts for the year's labor; but the same true and manly heart shines in every line.

Mr. Laughlin is still in the same unsettled condition, as negroes demand exorbitant wages and are ready to revolt at any moment. Please give my love to Lize and other mem-

bers of the family God bless you papa. Let me know if you are quite well by J—.

Ever your affectionate daughter,

FLORIDA.

Without having received any answer she writes again on July 26th, 1869, as follows:

DIAMOND PLACE, July 26th, 1869.

My dear father:

I have not written to you for sometime past, not because I had no wish to do so, but that it seemed to me, from the tone of your last letter, you intended our correspondence to cease. Why, I do not understand, for certainly I never dreamed that what I said in regard to the sale of the place, could possibly displease you. If I mistook your words, I hope you will forgive me; for I cannot think, without pain, of your going on a long journey, dissatisfied with or disappointed in me. I know you do not understand me very thoroughly, Papa, nor never did nor will; but, I am the greater loser thereby, as it withholds from me your confidence. Something in me always revolts against explanations of my motives and feelings, when I think either have met with injustice; and this has often caused me great distress. If this be a fault, it is one so thoroughly engrafted, as to leave me no hope of its eradication; but I write only to say dear papa, that I hope you may have a pleasant trip and return refreshed and invigorated. I had a letter from Lize a day or two ago, which I will answer soon, hoping in her reply to hear of your safe arrival in Kentucky.

May God bless you, dear papa, and keep you well, in which prayer Mr. Laughlin unites with me.

As ever affectionately your daughter,

FLORIDA.

Certainly these letters leave no room or necessity for explaining why she did not assert and pursue her rights in the courts against her father. She evidently thought herself powerless and remediless. She evidently believed that the state of the title and written documents interposed an insuperable barrier, even if the habit of a life-time of obedience and subordination to his powerful will, and her exceptional devotion to her father, had not prevented.

In the outset of this argument we premised that the *issue* was whether or not Joseph E. Davis bought in the Diamond Place for his daughter, Mrs. Laughlin. In the full blaze of light thrown over this question by all the testimony, let us now return to its consideration. Already the value of each fact or classes of fact have been commented on as they have been introduced. The task now before us is to look at the case in its entirety with reference to that *issue*.

Proof of the making of that agreement by witnesses who heard it would perhaps be the most direct evidence, but certainly not the most conclusive. Witnesses to a single and isolated fact may be mistaken or testify falsely. Witnesses to hundreds of independent facts constituting a course of dealing through a period of many years, and the correspondence and written records of their dealings in the actual performance of the agreement, are not subject to the infirmities possible in the case first mentioned.

Defendant's solicitor, seizing on the fact that we have introduced evidence tending to show the *making* of this agreement, independently of the absolute proof of its existence by subsequent dealings, resorted to a very common mode of argument, which has the appearance of being a most thorough examination of the evidence in detail. The practice has not unfrequently succeeded in misleading minds untrained in logical methods. Most lawyers are familiar with the arguments and even the catch-words by which they are introduced. They

begin somewhat after this style: "*We will now examine every piece of evidence in this case, carefully, minutely, and in detail.*"

He then proceeds to take up each separate witness or document, and to isolate each distinct statement from all others, and when he has divided any fact, statement, clause of a document, sentence of a repeated conversation, expression in a letter, or any other integral part of a whole history, until it is no longer divisible, it is held up, ridiculed as nothing, and laid aside with a self-congratulatory smile at the ease with which he is disposing of his adversary's evidence. When all of it has been thus treated he speaks of the incongruous fragments, not one of which support the case of his opponents.

In the same way one could prove that the very building in which this court sits has no existence.

I would take off shingle by shingle and brick by brick, and holding aloft before the very eyes of admiring spectators, every piece of wood or stone, iron or brick cry, out, "Is this a court-house?" and answering "No!" toss it aside; and when the last stone had been removed from its place, triumphantly point to the heaps of broken material, obtain a unanimous judgment that after a most patient and thorough examination, these things do not constitute a court-house; and prove it to have been a myth, a creature of the imagination.

Truth is one, and its philosphical investigation requires that it shall be viewed in its *entirety*.

By the course of argument above criticized, effort has been made to discredit complainants case as one seeking to unsettle long established rights by the proof of a parol trust thirty-six years ago, through the medium of parol testimony; and the fallibility of human memory, and the possible loss of rebutting evidence by death of witnesses is eloquently discoursed upon.

This is indeed "a false clamor." The testimony relating to the "parol trust" as it is called, though satisfactory in its

character, constitutes by itself, a small and unimportant part of the case, a mere *adminicle* of evidence, of a right actually acquired, possessed and enjoyed, of a trust, not only agreed upon, but actually entered on and fulfilled in all save the final duty of giving up the title to the *cestui que trust* and actual possession.

One cannot fail to perceive the supreme unfairness of confounding this with a case in which the scope of the bill is to *enforce* a parol trust which had no *actual visible* or *recognized* existence,—with a trust which *ought* to have *existed*, but *did not.*

The real scope of such a bill, would be to specifically enforce the original agreement, never recognized after its alleged making, never performed in any part, and therefore resting necessarily on the proof of its actual *creation.* Its exact terms, its consideration, and everything connected with it, would have to be shown by clear and satisfactory evidence, before a court could enforce it. Therefore, if obscured by the lapse of time, even if not actually barred by some positive statute of limitation, the court will say, we will not undertake to give life to an agreement which was *still-born* so long ago. It may have been cancelled by mutual consent at its very birth, and the means of showing that fact lost by the lapse of time. Such presumptions constitute the very basis of statutes of limitations, and the foundation of that principle of equity which affords repose to society by refusing relief in cases obscured by mists of time.

But when the parol agreement, parol trust, or parol gift, by which the estate was to pass, was so far executed as to transfer *possession*, actual *occupation*, *then* the same principles of equity come to the relief of the possessor under the parol agreement, and if, after the lapse of many years, the original owner or trustee obtains possession, or controversy should in any way arise as to the parol agreement, the court will listen

to proof of its inception and terms so far as proof can be adduced, merely for the purpose of determining the character of the *possession* under, or in pursuance of it. Its exact terms and consideration are no longer important. Satisfactory evidence of possession as owner for a great length of time is itself sufficient to raise the presumption that possession was taken under a parol gift or a parol sale, and it would be wholly unimportant under which. The lawyer who would prate about the uncertainties attending such a question in such a case and call the possessor's claim stale because of its great age, is seeking not only to *nullify* but actually to *reverse* the operation of the very laws and principles which he invokes. The same perversion was attempted in the case of Jefferson Davis vs. Bowmar, and others, 55 Miss.

The parol gift under which possession had been transmitted, had been made ten or twelve years before the sale in this case. One of the learned Judges in that case, Mr. Justice Campbell, said:

"The precise circumstances under which appellants possession commenced are obscured by the lapse of forty years, and the light of contemporaneous facts is dimmed by the great distance of time from which we are called on to view them * * * and in the uncertainty, if any, from the imperfect knowledge we have as to exactly how the possession began, appellant is entitled to the benefit of the just presumption, that he was holding as owner, from having acted so long, and from the beginning, as owner's do."

As to admissibility of declarations of Jos. E. Davis as testimony, Mr. Justice Chalmers said they "are not admissible on an issue of title, since nothing is better settled than that title can not be affected by the acts or declarations of a party *not in possession*, where uttered and done in his own interests, and not in the presence of the adverse party."

But the same able judge, in enumerating the character of of testimony supporting title in the *possessor* or *actual* occupant, said:

"Nineteen witnesses testify to the general repute within and without the family that he was owner, and to the fact that he was always so spoken of by Jos. E. Davis, and by the world at large. * * Outside the family it was not known that no deed had been made. Within the family a knowledge of this fact does not seem to have affected the general understanding that Jefferson was owner."

From the above it will be seen that much of the testimony denounced as hearsay is admissible and important.

The *common repute* in the family and among the neighbors —the acts and declarations of Mrs. Laughlin—her letters, the letters of Joseph E. Davis, his admissions, his acts and words treating the debt of the Diamond Place as Mrs. Laughlin's, his letters about it, and letters written at the time in due course of business rendering accounts, such other things as constituted part of the *res gestæ*, relative to the possession, occupancy, and payments.

In the case of *Davis* vs. Bowmar, Mr. J. Chalmers said "No principal is better settled than that a parol gift of land may ripen, by actual possession, into a perfect title. An entry under such a gift, though permissive and friendly in the popular sense, is hostile and adverse to the paper title in a legal sense—that is to say, it is an assertion of ownership in the occupant." Citing *Comins vs. Comins*, 21 Conn., 413; Sumner vs. Stevens, 6 Metc., 337; Syler vs. Eckhart, 1 Binn. 378; School Dist. vs. Blakerlee, 13 Conn., 227; Moore vs. Webb, 2 B. Monroe, 282; McGee vs. McGee, 37 Miss., 138; *La Frourbois* vs. Jackson, 8 Conn., 589; McCall vs. Neely, 3 Watts., 72; Ashley vs. Ashley, 4 Gray, 197. See also Tyler on Eject, 864; Hunbert vs. Trinity Church, 24 Wend,

581; Smith vs. Teller, 1 Johns., 180; Jackson vs. Ellis, 13 Johns., 118; Grafton vs. Grafton, 8 Smedes and M., 77; Cray vs. Goodman, 22 N. Y., 174; McKinney vs. McKinney, 1 A. K., Marshall, 460; Hale vs. Glidden, 10 N. H.

In this case complainant was not there as a donee under a parol gift, but as a *purchaser* under a *parol sale*, proof of which is fortified by proof of the payment of the purchase money and by written acknowledgements of the character of her possession subscribed by Joseph E. Davis.

Speaking of a parol gift, the court says in the case above cited:

" Undoubtedly, a parol gift of land, as affording the basis of a title made perfect by lapse of time, may be shown by parol. Undoubtedly, if the death of the donor, and the legally imposed silence of the donor, render it impossible, with absolute certainty, to demonstrate the gift by showing the exact time, place, and words at which and by which it was made, we may resort to the acts of the parties, and to their declararations when adverse to their interest, or when so made as to become part of the *res gestæ*.

The same rules apply to a parol sale, the advantage being with the latter in that the payment of the purchase money is an act over and above all others conclusive in its nature. See Sumner vs. Stevens, 6 Metc., 337.

Similar arguments were made in the case of *Davis vs. Bowmar* founded on the invalidity of parol gifts, and the consequent subordination of the holding to the paper title.

We quote from our brief in that case, 55 Miss., p. 751–2.

"Their argument is that the law presumes entry in subordination to title, and, therefore, the parol gift being ineffectual to convey title, Mr. Davis' entry and subsequent occupancy was permissive. This is known in logic as the fallacy of "*petitio principii.*" It is no answer to this criticism to reply that the *onus* is on us to show that the entry was, in its incep-

tion, under a claim of ownership. We have conceded it. We have assumed that *onus*. We have borne it. We have shown that it was so understood by both the parties. We have shown that its occupancy, in its inception, was accompanied by unequivocal acts of ownership. There is no distinction between his occupancy at first and afterwards. His claim of ownership was coincident with his entry. His entry was in consequence of his having acquired a claim of ownership, and was the act of appropriation. By such an argument as we are criticising every adverse possession could be converted into a permissive one. When resort is had to adverse possession, it is because the party is without the means of showing, by proof *aliunde*, that he had a legal right to make the entry. The entry and the continuous occupancy are not separate things, either in law or fact They constitute, in law and in fact, one continuous act. The entry is but the beginning of the occupancy. The attempt to separate them into two distinct acts and facts is the purest sophistry. To say that, "the character of the occupancy must be interpreted by the character of the entry, and the latter not by the former," is an ingenious and plausible, but specious manner of saying that an occupancy must not be judged of by its own visible character when it begins, but that there must be proof *aliunde* to show why and how it begun. We say that, like all other facts, it may be shown either way. If we show a parol gift first, we thereby show the nature of the entry, and thus determine the character of the occupancy begun in pursuance of it. If we show an occupancy bearing in its inception all the characteristics of ownership, we then show its character, including the entry, which is but the beginning of it, by its own visible, inherent, and inseparable properties. The latter is the direct proof, the former is showing the cause of the entry; and, judging of it as an effect by the character of the cause; both modes are equally admissible and equally effectual. We

have resorted to both, and our proof is compounded of the multiplied strength of these factors."

The above language is peculiarly applicable to the present case.

In the case of Sumner vs. Stevens, 6 Metc., 336, it is said of a parol sale: "Had the tenant simply shown an adverse and exclusive possession for twenty years, he would have shown that the owner had no right of entry, and that would have been a good defense to this action. Is it less so that the tenant entered under color of title? A grant, sale, or gift of land by parol is void by the statute. But when accompanied by an actual entry and possession it manifests the intent of the donee to enter and *take as owner* and not as *tenant*."

Complainant's entry and occupancy was under an agreement "not void by the statute," and is by that much better even than Stevens' in the above case.

It was argued with much vehemence that the parol agreement under which the property was purcahsed was void, and could not be enforced but for the allegation that Jno'a McCaleb desisted from buying on account of and as a party to the agreement.

This argument shows how far the learned counsel is from understanding the scope of the bill. The position is based on the mistake that we are now seeking a specific enforcement of that agreement—an agreement that is functus officio—one which served its purpose—one which was complied with substantially by allowing possession under it and receiving payment for it—an agreement which comes into this case merely as part of its history.

The Act of February 24th, 1844, (Huch. Code, 829) provides that *"ten years actual adverse possession shall vest in the possessor a full and complete right and title."* See *Ellis vs. Murray*, 28 *Miss.*, 129. *Ford vs. Wilson*, 35 *Miss.*, 504.

But our own Supreme Court has decided as follows, as to trusts, such as counsel say are void:

M. advanced the purchase money and took a deed for land in his own name with parol agreement to convey to J., on repayment of the sum advanced.

It was held to create a valid trust in the following language:

"It is manifest from the whole case that, * * * the title was merely vested in Jones as a security. * * * The party could not in conscience retain the legal title under the agreement between the parties."

Decree enforcing the trust was affirmed.

Soggins vs. Heard, 31 Miss., 427.

In this case Heard bought land of Soggins under an execution, but pursuant to an understanding that the latter should have the benefft of it. The court said:

"It is not now an open question, that when a party agrees before the sale to purchase property about to be sold under an execution against a party, and to give such party the benefit of such purchase, that the agreement is binding and will be enforced. The defendant, upon the faith of such an agreement, may have ceased his efforts to raise the money for the purpose of paying off the execution, and thus preventing a sale of his property. It will not do to say that the party promising, was moved merely by friendly or benevolent considerations, and may, therefore, at his option, decline a compliance with his agreement. Such considerations constitute the foundation of

almost every trust, and the trustee should be held to account as nearly as possible, in the same spirit in which he originally contracted."

Such a trust would be within our statute of frauds now, and within that of most of the States, but not of Mississippi at that time.

But, as we have already seen, the absolute invalidity of the agreement at the time can have no effect on complainants rights now.

An agreement is one thing and the evidence of it is another. If not properly evidenced the law will uot enforce it, but if voluntarily carried out, payments made and possession held under it, the informalities by which it was evidenced become wholly unimportant.

Lapse of Time.

All of the foregoing remarks relating to the parol agreement are applicable to the defense attempted to be made on "the lapse of time." The attentive reader will doubtless anticipate the application. Indeed, it has already been sug gested in that discussion.

The lease was not a conveyance of title which we seek to set aside, but a mere piece of fabricated documentary evidence casting a cloud on the title of the complainant in possession. When consulted about this case it was matter for serious consideration whether we should not advise waiting until the heir or devisee of complainant should be sued for possession. If this instrument of evidence, falsifying the truth by false recitations and false acknowledgments, was acquired by undue influence, it was void, and can be rendered nugatory as evidence whenever introduced to establish a right. The time has not yet arrived when we are called on to attack it.

But time has already destroyed many of the evidences by which complainant could nullify this less perishable documentary evidence and she therefore anticipates the time, and seeks

whatsoever relief may be proper, to strike down now and forever the false witness, and to perpetually enjoin any attack predicated on it against her.

She requires no aid to establish her title, she can always do it. She requires no decree to enforce a trust—her payments, possession, and lapse of time, had accomplished it when this instrument was exacted. She comes of her own accord and in her own interest to perpetuate her perishing evidence in rebuttal of this sealed and recorded lease. Jos. E. Davis and his devisee have always known the injustice of their pretensions. He knew the very right of the matter.

His letter of January 25th, 1869, shows that he foresaw this contest as one likely to arise when his daughter should become emancipated from the ties of affection, and parental influence, which controlled her then.

If the cases which were cited by defendant are read with a clear conception of the broad distinction between a case where one in possession is sought to be estopped from defending against a fraud perpetrated *long ago* and a case where one out of possession seeks to acquire a right alleged to have been withheld, or from which he claimed to have been excluded *long ago*, by fraud, there can be no difficulty.

In the very case first read by defendant's counsel

Badger vs. Badger, 2 Wallace, p. 87, in which the effort was to *set aside* a sale which had been made and possession enjoyed under it for thirty years, in part of the opinion the court says :

"Long acquiescence and laches by *parties out of possession* are productive of much hardship and injustice to others and can not be excused but by showing some actual hindrance or impediment, &c."

There is, in that case, the same radical distinction;—the effort to establish and enforce some *old alleged right*, not only by a party "*out of possession*" but by parties who were *never*

case of *res adjudicata*, the court advert to it as potent evidence in favor of the trustee, especially as the near kindred of that complainant acquiesced in that decision.

Wherever lapse of time has barred relief, it has been in cases in which *recovery* of something not *possessed* was sought.

In the case of *Hunter vs. Town of Marlboro*, 2 *Wood & M.* 198, a parol trust was *affirmatively* enforced by decreeing execution of title deeds. The parol trust was disputed and it was insisted that after a great lapse of time (over 20 years in that case,) parol evidence ought not to be permitted to establish the trust. The court replied:

"If the evidence was more doubtful as to the special agreement by the town to give a title to this land, it ought now to be done after allowing so long a possession."

Alfred Pillsbury
for appellants

possessed of the alleged right, never in actual enjoyment of it at any time. Its *entire existence* including its *creation* had never been manifested by visible *acts* and facts, but was mere matter of parol testimony. It is important to observe also that such cases justly give rise to all the presumptions of possible explanations, lost by time, which are self-suggestive by the very nature of the *one sided* case made by the party seeking recovery.

In this suit the whole history of the case is before the court, corroborated at every step by documentary testimony The history of the case, nay the very motives declared by all the parties, are so clearly shown, that the mind seeks for no further facts, no explanations seem to be wanting. Dead witnesses are talked about, but ingenuity has been unable to suggest what tale they could tell, consistent with the known facts, which would give them a different meaning.

The case of *Hume vs. Beale's Ex'r.*, was a suit for account, alleging waste by a trustee of personal property forty years before. There was absolutely no reason for the delay. The presumptions from the evidence seemed to be all against the complainant, and a full and elaborate opinion of the court is rendered to support that view. In the course of the opinion the court say:

"Whether the lapse of time is sufficient to bar a recovery, must, of necessity, depend upon the particular circumstances of each case."

In that case a similar charge had been made against the same trustee nearly forty years before, and the decision of the Chancery Court was in his favor, and although not a

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Supreme Court of the United States.

FLORIDA LAUGHLIN, *Appellant*,
vs.
JOSEPH D. MITCHELL, *Appellee*.
No. 210.

I submit that the circuit judge erred in excluding the deposition of Mrs. Laughlin, the appellant. This deposition will be found on page 109 of the record. On page 197 of the record his honor the circuit judge says in his opinion that "it is admitted that complainant's testimony as to the understanding and agreement between her and her father as to the cessation of the alleged trust is incompetent, and cannot be considered." However much the appellant's counsel may have been willing to concede this at that time, no such concession can now be made, since the decisions of this court in Potter *vs.* Nat. Bank, 102 U. S., and Monongahela Nat. Bk. *vs.* Patterson, 109 U. S.

In the light of these decisions, and according to the plain reading of the Revised Statutes, it is clear that appellant's deposition is admissible. As this suit stands, no executor or administrator of Jos. E. Davis is a party to this suit, and therefore no judgment can be rendered either for or against his executors or administrators.

It is simply a suit between appellant and a devisee of Jos. E. Davis, deceased. Appellant's case is not therefore within the letter or the spirit of the proviso, and her deposition is admissible.

MURRAY F. SMITH,
Attorney for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1886.

FLORIDA LAUGHLIN,
Appellant,
vs.
JOSEPH D. MITCHELL,
Appellee.
} No. 210.

Brief of Albert M. Lea for Appellee.

Gray & Clarkson, Printers, Washington, D. C.

Supreme Court of the United States.

OCTOBER TERM, 1886.

FLORIDA LAUGHLIN, *Appellant*,
vs.
JOSEPH D. MITCHELL, *Appellee*.
No. 210. Equity.

BRIEF OF ALBERT M. LEA FOR APPELLEE.

Statement of Case.

On the 25th day of June, A. D. 1881, appellant filed her bill in the circuit court of the United States for the southern district of Mississippi against Joseph D. Mitchell, the appellee, and against Joseph H. D. Bowmar and Jefferson Davis, as executors of the will of Joseph E. Davis, deceased, and alleged in substance as follows:

That she was the owner of the "Diamond Bend" plantation, situate in Warren County, State of Mississippi; that she was in possession of said plantation as owner, and had so held it for many years; that she is the daughter of Joseph E. Davis, who died in the year 1870, and that the defendant, Mitchell, is his grandson; that the said Joseph E. Davis left a will, a copy of which is exhibited, by the first clause of which he devised all of his estate to said Mitchell and his sister, subject to bequests thereinafter made; the second and third clauses of the will being as follows:

"Secondly. I give and devise to my daughter, Florida Laughlin, the estate known as the Diamond Place, containing about one thousand two hundred acres, for and during her

natural life, with full enjoyments of the profits and privileges thereunto belonging.

"Thirdly. I give and devise to my grandson, Joseph D. Mitchell, the plantation known as the Diamond Place, now in possession of and occupied by my said daughter, Florida Laughlin, who has a life-estate thereon, to hold and enjoy the same in fee-simple." * * *

She alleges that her father, Joseph E. Davis, became possessed of this property only *through her and as her trustee*, and she sets out circumstantially and at length the nature of the trust assumed for her by him, which may be stated as follows: In the year 1844, complainant, then the wife of David McCaleb, resided with her husband on this plantation, which was then the property of said McCaleb. The property was encumbered by trust-deeds executed by them jointly, one for $13,955.80 in favor of one Charles Jacobs, and one for $4,201.61 in favor of Laughlin, Searles & Co., commission merchants in the city of New Orleans. These trust-deeds, in addition to the lands, embraced a number of slaves. Besides these debts, McCaleb owed other large debts, which were pressing, and which rendered his condition precarious. The trustees in the Jacobs trust deed, pursuant to its terms, advertised the property for sale at public outcry on the 15th day of June A. D. 1846. The express trust now alleged to have been assumed by Mr. Joseph E. Davis is thus charged in the bill:

"Before the appointed day the said David McCaleb had, without difficulty, procured the promise of assistance from several of his near kinsmen, who were men of large means and credit, and one Jonathan McCaleb, his uncle, who was much attached to his nephew, said David McCaleb, had promised to purchase said property at the sale, and, taking title in his own name, give David McCaleb ample time and opportunity to work out of his debt, and repay to him such amount as he should have to advance for the purpose of making the purchase. Accordingly, said Jonathan McCaleb

attended said sale amply prepared and fully determined to purchase said property in trust for the benefit of his said nephew. Your oratrix had, however, in the mean time, solicited a similar assistance from her father, the said Joseph E. Davis, who had consented to make purchase for the same purpose and *on like terms of trust to secure and hold the same, that your oratrix and her said husband might be able in time, to redeem the property*, except that said Joseph E. Davis required that his purchase should be *in trust for your oratrix*, his daughter, instead of David McCaleb. The latter was brought to give his assent to this proposed arrangement on the suggestion that we would be more secure in our homestead and in a competent support if the title should become vested in your oratrix, as it would then be secure from the reach of any creditors of him, the said David McCaleb. On the day of sale the said Joseph E. Davis and the said Jonathan McCaleb, attended by other of his kindred, arrived at the appointed place, each ready to carry out the arrangement which had been determined on; and it was not until after a consultation of considerable length, and with protestation of reluctance on the part of Jonathan McCaleb, that it *was finally agreed that the purchase should be made by and in the name of Joseph E. Davis, to be held for and sold to your oratrix, on payment of such sums, with the interest thereon, which said Joseph E. Davis might be required to pay or assume*, instead of being bid in by and in the name of Jonathan McCaleb, to be redeemed in like manner by David McCaleb. But when this was agreed upon, and said Jonathan McCaleb withdrew from his contemplated arrangement and refrained from bidding, at the urgent solicitation of the said Joseph E. Davis, *it was upon the thoroughly well-understood agreement that the one arrangement was to be a substitute for the other*, each having been designed for the sole benefit, assistance, and protection of your oratrix and her said husband, to secure for them the only homestead which they had possessed since their marriage, and the trust so assumed by

pledges, to do for us what others were prevented from doing, was at that time regarded by said David McCaleb and his kinsmen, as well as by said Joseph E. Davis, as imposing upon the latter obligation of the highest character, which were always fully recognized by him for several years, and until the happening of the event to be hereinafter narrated."

It is further averred that it was made known at the sale that Joseph E. Davis was bidding for his daughter, and, as a result, there was no substantial competition, and consequently all of the property, real and personal, was knocked off to him at $28,531.00, which was scarcely more than one-third of its value. That after the sale there was no visible change in the management and control of the property, and the said Joseph E. Davis never, during the life-time of said David McCaleb, pretended to have any sort of personal or beneficial interest in it; that McCaleb died in May, 1847, and complainant shipped the crops of that year, as those of the preceding year had been shipped, to factories in New Orleans, to the credit of Diamond Place account "for the Charles Jacob judgment." That in July, 1848, complainant married Edmund C. Laughlin, her present husband; that they continued to live on the plantation, shipping the crops as before, applying the same, sometimes through their merchants, and sometimes by direct payment, to Joseph E. Davis, to the discharge of said indebtedness; that she continuously occupied said plantation as a homestead, and made payments annually, until before the year 1858 she had more than repaid Joseph E. Davis all money and debts paid out and assumed by him for her on account of said property.

The bill finally charges that on December, 1858, Joseph E. Davis, having conceived the purpose of securing this property to himself, sent for complainant and her husband and showed them a paper which he had prepared and which he insisted they should sign. This paper is made an exhibit to the bill, and is an instrument by which Joseph E. Davis leases to his daughter, the complainant, the Diamond Plant-

ation and slaves, for her life, and which contains a covenant that she will manage the plantation and slaves in a prudent and husband-like manner, and an acknowledgment that the sole legal and equitable title in and to said plantation and slaves was in Joseph E. Davis. This instrument was signed by Joseph E. Davis, Florida Laughlin, and Edmund C. Laughlin, her husband, on the 27th day of December, 1858, and afterward, on the 31st of May, 1859, the said Florida and her husband appeared before the proper officer and acknowledged the deed. It is charged that the signature of this paper by complainant was induced by the vehement demands of her father, "and she, the said Florida, seeing the nervous and excited condition of her father, and fearing disastrous consequences to him in his then feeble state of health if she should any longer oppose him, under this compulsion then and there signed said deed;" and the subsequent acknowledgment "was forced and extorted out of them by threats on the part of Joseph E. Davis if they did not acknowledge it to take possession of the place and put an overseer on it, and leave to your oratrix the bare occupancy of the house and garden, with no other provision."

The prayer of the bill is that this instrnment of lease, and the devise of the property to defendant Mitchell, be decreed void, and that complainant may be decreed to have the absolute beneficial title to said property as against said defendant. This is substantially the bill, stripped of much richness of verbiage.* Joseph D. Mitchell answered, denying all the material allegations of the bill. Complainant, at the hearing, dismissed as to the executors of Joseph E. Davis, and it is from a decree dismissing the bill upon final hearing that this appeal is prosecuted.

ARGUMENT.

(1) It will be seen that this suit is an attempt to enforce *an express parol trust in land* alleged to have been created *thirty-five years* before the filing of the bill, and *eleven years*

after the death of the alleged trustee, an essential part of the relief sought is in the cancellation of a solemn instrument, executed by the complainant and the dead trustee, the recitals and covenants of which are at war with the idea of the trust, *twenty-two years after its execution.*

Dates are important in any right view of this matter. The trust is alleged to have been assumed by Joseph E. Davis on June 15, 1846. The instrument of lease was executed December 27, 1858. Joseph E. Davis made his will March 18, 1869, and *died September* 19, 1870. The bill was filed *June* 25, 1881. Of those who are alleged to have been parties to the trust, complainant alone survives, over seventy years of age when she commenced her suit. The McCalebs, nephew and uncle, died long ago. Of all those who were present at the sale in 1846, complainant and two old servants appear to be the only survivors. John M. Chilton and Charles J. Searles, the trustees who made the sale; William Laughlin, to whom a portion of the crops were shipped; McDowell, the overseer; all the creditors, and their representatives whose interests took them to the sale, all of them have passed away.

The lapse of all these years, the death of parties and witnesses, the long-continued and complete acquiescence of complainant in her father's disposition of this property by deed and will, during all which period *she had a perfect knowledge of every fact charged in the bill,* present insuperable barriers to relief in a court of equity.

No tribunal has more steadily set its face against the enforcement of trusts so stale than has this court.

In Badger *vs.* Badger, 2 Wall., 92, Mr. Justice Grier, speaking for the court, uses this language, peculiarly applicable to this case in many of its features: "The case of Michond *vs.* Girod, cited by the appellant's counsel, is an example of the class in which the concealment of the fraud was an aggravation of the offense. The facts of the case were 'clearly established' by records and other written documents, and the

court were not called upon to found their decree on the frail memory or active imaginations of ancient witnesses, who may not be able, after a great lapse of time, to distinguish between their faith and their knowledge, between things seen and heard by themselves and those received from family or neighborhood gossip, or, upon that most unsafe of all testimony, conversations and confessions remembered or imagined, partially stated or wholly misrepresented. * * * But the case before us has none of the peculiar characteristics of those to which we have referred. For more than twenty-five years the widow and heirs have acquiesced in this sale, and it is more than thirty years since the administration account was settled which is alleged to have been fraudulent. The guardian of the complainant who approved the account is dead; the widow died in in 1855. Two of the heirs were of full age in 1831, and the others afterward. This bill was filed in 1858. The bill does not state the age of complainant. But at the time of filing his bill he must have been over forty years of age. The whole transaction was public, and well known to the widow, and the heirs, and their guardians. * * * The complainant claims as assignee of his elder brothers and sisters, and uses them as witnesses to prove the alleged fraud after a silence of over thirty years. * * * A daughter who was twenty-three years of age when this sale was made, and had full knowledge of the whole transaction, after near thirty years' silence, now comes forward to prove that her concurrence and assent were procured by fraud; and now, *after the death of the guardian and the mother*, who could have explained the whole transaction, the aid of a court of chancery is demanded to destroy a title obtained by judicial sale, after the parties complaining, with full knowledge of their rights, have slept upon them for over a quarter of a century."

In Hume *vs.* Beale's extrx., 17 Wall., 348, this doctrine is tersely and forcibly stated by Mr. Justice Davis, as follows: "It is an established rule with courts of equity, inde-

pendent of any statute limiting the time in which suits can be brought, that they will not entertain stale demands. This rule is necessary from considerations of public policy, and because it is *impossible to do entire justice* when the transactions sought to be impeached have become obscure by lapse of time, and the evidence on the subject is liable to be lost. Story, referring to the rule imposing diligence upon parties seeking relief, says: 'Hence if there be a clear breach of trust by a trustee; yet if the *cestui que trust*, or beneficiary, has for a long time acquiesced in the misconduct of the trustee, with full knowledge of it, a court of equity will not relieve him, but leave him to bear the fruits of his own negligence or infirmity of purpose.' * * *

"It thus appears that all grounds of action existing in this case must have occurred between twenty and thirty years ago, and that the alleged breach of trust, for which the estate of Beale is asked to account, took place thirty-seven years before the institution of this suit. *Why have these complainants slept upon their rights for this great length of time, and why have they delayed invoking the aid of a court of equity until the person charged with misconduct is dead?* It is plain this unusual delay places them upon the defensive, and requires satisfactory explanation before they can obtain relief."

And further upon defense of staleness, see:

Phillipp *vs.* Phillippe, 115 U. S., 151.
Hall *vs.* Law, 102 U. S., 465.
Godden *vs.* Kimmell, 99 U. S., 210.
McKnight *vs.* Taylor, 1 How., 168.
Piatt *vs.* Vattier, 9 Pet., 416.
Marsh *vs.* Whitmore, 21 Wall., 185.
Brown *vs.* Co. of Buena Vista, 95 U. S., 161.
Elmendorf *vs.* Taylor, 10 Wheaton, 152.
Harwood *vs.* R. R. Co., 17 Wall., 78.

Jenkins *et. al. vs.* Pye *et. al.*, 12 Pet., 241, was a case in which the bill sought the annulment of a deed made by a

daughter to her father of her property for a nominal consideration, on the ground, 1st, that the deed of a child to a parent is to be deemed *prima facie* void; 2d, the actual exercise of undue influence by the father in its procurement. This court, after declining to hold the parent disqualified to take a voluntary deed from his child, thus disposes of the case on the ground of staleness: "But if anything was wanting to resist the claim on the part of the appellees, and to establish the deed and the interest derived under it, it will be found in the lapse of time. The deed bears date the 3d of November, 1813; the grantor, Eleanor Jenkins, then being twenty-three years of age. She was married about two years thereafter, and died in the year 1818; and not a whisper of complaint was heard against the transaction during her life-time. George Jenkins, the grantee, lived until the year 1831, and no complaint was made in his life-time; after a lapse of eighteen years it is difficult, if not impracticable, fully to explain the transaction.

"Lapse of time, *and the death of the parties to the deed*, have always been considered, in a court of chancery, entitled to great weight, *and almost controlling circumstances*, in cases of this kind."

(2) *The parol trust must be clearly proved.* While the 7th section of the English statute of frauds was not incorporated in the statute of Mississippi until the revision of her laws in 1857, and an express trust in lands might prior thereto have been created and established by parol, the courts of that State always regarded such trusts with disfavor and suspicion, and have, in harmony with the current of authority in this country and in England, required their establishment by clear and satisfactory proof. The evidence must be convincing and fix the nature and terms of the trust with certainty.

In Mercer *vs.* Starke, 1 Smedes & Marshall Chr. 487, Buckner, Chancellor, says: "It is necessary that the parol declarations of trust should be clear and unambiguous, before the

court can change the absolute nature of a conveyance, and decree the execution of a trust not expressed in the deed."

See also—

Dillaye *vs.* Greenhough, 45 N. Y., 438.
Slocum *vs.* Marshall, 2 Wash. C. C., 397.
Smith *vs.* Mathews, 3 De G. F. & J., 139.
Cook *vs.* Barr, 44 N. Y., 156.
Parkhurst *vs.* Van Cortland, 1 John, Chr., 237, and
Steer *vs.* Steer, 5 John, Chr., 1.

Tested by these requirements, it will be seen how far short falls the testimony in support of the bill. Not a witness is produced who claims to have any positive knowledge of the assumption of the trust by Joseph E. Davis save the complainant herself, and she cannot be heard to testify. Appellee moved to exclude her deposition in the court below, first because she was not a competent witness under section 858, Rev. St. U. S., and, second, for incompetency under section 1602, Rev. Code of Miss. of 1880. Both statutes excluded her.

Hume *vs.* Beale's Ex't'r (supra).
Eslava *vs.* Mazange's Adm'r, 1 Woods, 625.

In the last case Mr. Justice Bradley thus alludes to section 858: "This act is a recognition of the glaring injustice it would involve to permit one party to propound himself as a witness in his own behalf as to a transaction between him and a deceased person, who can no longer give his version of the affair. If the law were to allow a man to wait until his antagonist were dead, and then to sue his heirs, and put himself upon the witness-stand, and give his version of the affair, with no one to contradict or qualify his testimony, it would be as gross a prostitution of the forms of law as to allow a man to be judge in his own cause. Every honest mind revolts against it."

Rushing *vs.* Rushing, 52 Miss., 330.
McCutchen *vs.* Rice, 56 Miss., 459.
Jones *vs.* Sherman, 56 Miss., 559.
Jack *vs.* Bridewell, 51 Miss., 887.

Appellant's deposition excluded, there is no evidence in support of the trust other than the letters of Joseph E. Davis to his daughter and her husband, and the depositions of a number of witnesses as to common repute in the neighborhood and in the family concerning the beneficial ownership of the property after the sale and the character of Mr. Davis's purchase. Of this nature is the testimony of T. C. Bedford (Transcript p. 36), who gave his "impression derived from my uncle, who was an intimate friend of Mrs. Laughlin;" of Mrs. Varina Davis (Id. p. 95), who "never heard any one else but Mrs. Laughlin mentioned as owner of the place for years after sale;" of W. W. Lord (Id. p. 62), who "thinks he can safely say that the general reputation and belief was that Mr. Davis bid in the place for the benefit of Mrs. Laughlin;" of Louise Neil (Id. p. 117), who says she was at the sale, and heard Mr. Davis say he bought it in for Mrs. Laughlin; of G. W. McElrath, who knows nothing save from public rumor (Id. p. 136). Such testimony, if competent, hardly merits the attention of the court. If of any value, it is overcome by the other testimony. Mrs. Mary E. Hamer, who enjoyed to a greater degree than any one else the affection and confidence of Joseph E. Davis, and to whom he referred his executor for information as to his affairs (Transcript, pp. 139, 126, 127), says: "The matter of the ownership of Diamond plantation was a frequent subject of discussion in Mr. Davis's family as far back as I can remember. I never heard Mr. Davis or any other member of the family say that Mr. Davis held the title of Diamond place in trust for Mrs. Laughlin; do not remember ever to have heard it until this morning."

Mrs. Lucy Mitchell (Trans., pp. 132, 133), a niece of Mr. Davis, "never heard it said in the family that he bought this place for Mrs. L., and that it would be hers as soon as the debt was paid."

Robert Wood, an old colored man on the place at the sale, testified (Trans. p. 141): "The only thing I took notice of

was, immediately after the sale was made, Joe Davis got up and stated that he wanted it well understood that this property has been purchased by me twice, and is never to go out of the Davis family. This was in presence of Jonathan McCaleb."

(3) The letters of Mr. Davis and Mrs. Laughlin.

The letters of Joseph E. Davis to his daughter and her husband are mainly relied on as evidencing the trust.

Seventeen letters, which passed between these parties, are found in the record; some written before the execution of the lease and some after, and in none of them is there the slightest allusion to the trust relation which it is now charged that Mr. Davis occupied. These letters indicate that shortly after complainant's marriage with Laughlin a desire, originating with him, sprung up to obtain from Mr. Davis the legal title, and frequent appeals were made to him to that end. In reply to one of these appeals he writes the letter of September 12, 1849 (Trans., p. 50), in which he informs her that he had left the place to her in his will, subject to the debt upon it, "amounting to $20,000, now due and payable to the house of Wm. Laughlin & Co. How much more may be incurred in course of litigation, I am unable to say;" and, in conclusion, he says: "I have no interest of my own that is to be affected. The interest is yours, and as it is likely to affect you only am I influenced." And in the letter to E. C. Laughlin, of October 3, 1849 (Trans., p. 51), he says: "I am sorry to perceive a feeling of dissatisfaction with you and Florida, nor can I account for any construction of my letter that implied want of confidence; certainly none was intended. Your remaining on the place is for the advantage of the place; but I could not request it, as it might interfere with a large interest elsewhere. I have no motive but your own interest. I have not ascribed to you any selfish motive, or even thought of it. The disposition I have made of the Diamond Place you are probably aware of by a provision of my will; this I think the best for many reasons, and which one of more experience would see."

In a letter to his daughter of same date (Trans., p. 51), he says: "I have your letter by the Magnolia, and, as there is so much difficulty in making myself understood, I will not attempt anything beyond the plainest matter. You say I have not requested Mr. L. to attend to matters generally. How could I understand that he was willing to do so? Neither has he nor you ever expressed to me any intention of remaining, nor did I think it necessary. I supposed he would act as he thought best. Now, who has shown a want of confidence: you, in withholding all knowledge of your plans and objects, or me in omitting to inquire into them? I am pained to perceive any feeling of dissatisfaction, and such matters had better be reversed for personal confidence."

From these two letters, the only ones written before the execution of the lease in 1858 referring to the title to the property or his intentions therewith, it appears that Mr. Davis had at that time intended to settle the place upon his daughter subject to the incumbrance of the indebtedness he had incurred in its purchase and that arising from the litigation following the sale; or was willing to facilitate any arrangement that she and her husband might be able to make for the acquisition of the title upon the payment to him of this indebtedness. But there is no recognition or suggestion of any legal or fiducial obligation on his part to convey the property to her.

The letters of Mrs. Laughlin, commencing with the one of September 15, 1849, and ending with that of July 26, 1869 (Trans. pp. 54, 85, 128, 129, 130), while expressing an earnest desire on her part to have a title, and containing numerous appeals therefor, based upon a desire that her husband should occupy a more independent position, and suggesting that her father had already done enough for others of his family, never once question or challenge his right and power to do with the property as he pleased, and contain not an intimation that his title was coupled with a trust.

The evidence discloses that Mrs. Laughlin is "very bright and well informed;" that she is a woman of more than ordi-

nary intelligence; that she is like her father, both of whom, it is said, "resisted opposition to the extent of putting themselves in the wrong where it occurred." Is it not passing strange that during this period while, incited by her husband, she was urging upon her father every consideration likely to induce a compliance with their desire, that she does not even allude to the agreement between the McCalebs, her father and herself, which is made the foundation of her right to recover in this suit? It is hard to explain this upon any theory consistent with the truth of the averments in the bill.

It would require a very strained construction of the language of Mr. Davis in this correspondence to make it of service in support of the bill. In this connection the comment of Kent, chancellor, in Steere *vs.* Steere, 5 John., chr., 9, seems pertinent: "Parents will usually make declarations and express intentions of holding their property for their children, but a technical trust would not easily be deduced from them. It would be injurious to that freedom of intercourse, and to the operation of those kind and generous affections which ought to be cherished in the circle of the domestic connections, to make such deductions from loose and general expressions in a confidential correspondence between one member of a family and another, and to give them the force and rigor of legal obligations."

(4) On the 23d day of June, A. D. 1847, about a year after Joseph E. Davis had purchased, Jonathan McCaleb (who had on June 11, 1846, recovered a judgment against David McCaleb for $55,069), and other creditors of David McCaleb filed a bill in the Mississippi superior court of chancery against Joseph E. Davis, Florida McCaleb, and the trustees, Chilton & Searles. The pleadings and proceedings in that case were offered in evidence by appellee here, and are in the transcript pages 149 to 193.

From the averments in the bill and answers it appears, 1st, that there was competition at the sale between Mr. Davis and the creditors of David McCaleb, the largest of whom was

Jonathan McCaleb; and 2d, that Mr. Davis purchased this property in his own right, and was then treated and regarded by all parties connected with the transaction as the legal and beneficial owner. It further appears from this record that Jonathan McCaleb, instead of attending this sale as a benevolent kinsman determined to protect and secure to his nephew and niece their cherished home, was there rather in the character of an importunate creditor. That, instead of the agreement and understanding between him and Mr. Davis set out in the bill, by which he was induced reluctantly to forego his benevolent designs, there was, and continued to be, hostility between them concerning the purchase of Diamond Place.

The record of this old suit, made when the facts and circumstances attending Mr. Davis's purchase were fresh in the minds of the numerous parties, furnishes strong testimony against complainant. Jonathan McCaleb's connection with the sale and the negotiations and agreement between Mr. Davis and himself, as charged in the bill, are of the very essence of complainant's case. Indeed, without the averments in this regard the bill would have been demurrable. It would have then presented the case of a naked promise by one to buy lands in his own name, pay for them with his own money, and hold them for the benefit of another, which this court, in Blake *vs.* Howland, 97 U. S., 624, has decided cannot be enforced in equity, and is void. Now the sworn answers of Joseph E. Davis and of Florida Laughlin in that case are utterly irreconcilable with the statements of the bill in this, touching the attitude of Jonathan McCaleb at the sale and his relations to the parties. If complainant answered truthfully in that suit, her allegations now made cannot be true.

(5) We come now to the execution of the instrument of lease on the 27th of December, 1858.

If that deed be not void it is conclusive of the case. The views of the Court below upon this part of the case are so

clearly stated that I will quote from the opinion: "As already stated, the proof shows that both parties regarded Mr. Davis as holding the legal title and right to have the income of the plantation applied to the payment of the purchase-money bid by him at the sale and the other claims against the Diamond Place. Complainant could not claim, under these circumstances, to have the title conveyed to her until all these demands were satisfied, *even admitting the understanding between her and her father* at the time of sale, as alleged in the bill.

"I am satisfied from the proofs that this was not done at the time the lease or deed of 1858 was executed. The parties, if competent to act and contract between themselves; if no fraud, mistake, or undue influence intervened, had a right to enter into the contract and agreement set forth in the deed of lease of 1858. That Mrs. Laughlin is a woman of unusual intelligence, and was then with a sufficient amount of will-power to contract and manage her own affairs, is apparent from her different letters addressed to her father, and made part of the evidence; and that her husband is a man of at least ordinary intelligence is apparent from his letters and testimony. The proof shows no fraud or deception on the part of Mr. Davis. The only other charge is that of undue influence. That complainant and her husband did not get the title they desired is manifest. The letter of Mr. Davis of January 4, 1859, is relied on as constituting a threat that if she did not accept the terms of the lease he would dispossess her and put an overseer on the plantation. The letter does not bear this construction. He says there is nothing now to prevent his putting an overseer on the place, or to prevent his executors from doing the same thing—that is, if she returned and refused the terms of the lease. He did not say that he would dispossess her, and leaves her the option to do so, and proposes, in that event, that he will leave her in possession of the house, garden, and appurtenances, and will give an income in place of the provisions o

the lease. She was thus left the option to accept the one or the other, or to refuse both, and stand on whatever her legal or equitable rights may have been.

"After waiting nearly five months and deliberating upon the proposition, without any further influence on the part of her father, and with ample time to consult counsel and friends, *they, and not Mr. Davis*, placed the lease on record, thus accepting its terms and enjoying its benefits, without any attempt to revoke it until the filing of this bill, June 25, 1881, for a period of twenty-two years after they had acknowledged and recorded the deed. There is no evidence that any intimation was given to Mr. Davis of any further dissatisfaction with the terms of the lease or intention to assail it during his life-time. On the 18th day of March, 1869, Mr. Davis made his last will and testament, by which he devised the remainder interest in this real estate to the defendant. There having more than ten years elapsed after the lease was *recorded* by Mrs. Laughlin and her husband before Mr. Davis made his will, he had a right to believe that he had the power to devise this remainder interest to whom he pleased; and for this reason, if there were no other, I am of the opinion the complainant is estopped from having this lease or deed declared void. She knew all the facts in relation to her title and in relation to the execution of the instrument during the life-time of her father as well as since. To wait until after his death, and until after the death of most of the persons who could have had any knowledge of the transaction, and after her father had by will disposed of his estate, and it is probable in some respects in a manner that he would not have done had he not believed that he had full power of disposition of the remainder interest in this real estate, and thendefeat his will, would be inequitable and unjust."

The conclusions here reached appear so well-grounded on admitted principles of equity, and are so consonant with the repeated decisions of this court, that it is not deemed profitable to add argument or cite authority in their support.

It is apparent from the evidence that the crops from Diamond Place, after Mrs. Laughlin's support and household expenses were provided for from the proceeds, fell far short of meeting the debts incurred by Mr. Davis in its purchase and in subsequent litigation, and that at the time the lease was executed there continued to be a large balance due. The fact is so found by the court below. (Opinion, Transcript pp. 200, 201.) Taking the most favorahle view of the matter for complainant, and admitting that Mr. Davis held the property under an agreement to convey upon the payment of this balance, it was competent for complainant and her husband to elect whether they would require an execution of the trust, or would accept in lieu and extinguishment of the trust, a life-estate freed of the incumbrance of the indebtedness due Mr. Davis. They made that election. They took the deed with them to their home. They considered the matter for nearly five months, during which time they had before them Mr. Davis's letter suggesting the return of the deed.

After this time for consideration and consultation with counsel and friends, they determine to accept the provisions of the deed, and in order that the instrument may protect them in their possession, and may become a public muniment of their title, they go before the proper officer, acknowledge it, and place it upon the records of the country. That deed has protected them in the possession and enjoyment of the property to this day.

(6) The bill makes grave charges. The daughter arraigns the father on charges of fraud, deceit, and infidelity to trusts, which present him as a man utterly base and depraved. Having passed the allotted span of life herself, without children to enjoy the fruits of this suit if successful, she is seeking an estate which she can only recover by establishing the infamy and disgrace of her father. How persistent, how powerful, and how malign must have been the influence that has placed her in that position! The vigorous language of Justice Story in Prevost *vs.* Gratz, 6 Wheaton, 481, is appli-

cable here: "Fraud or breach of trust ought not lightly to be imputed to the living, for the legal presumption is the other way, and as to the dead, who are not here to answer for themselves, it would be the height of injustice and cruelty to disturb their ashes and violate the sanctity of the grave, unless the evidence of fraud be clear beyond a reasonable doubt."

Joseph E. Davis has slept in an honored grave for sixteen years. That the court may know the manner of man he was, I refer to the testimony of Jefferson Davis, who was called as a witness for complainant, to be found on pages 42 to 50 of the transcript. Mr. Davis says: "He was a man of very strong character; his influence over the members of his family was very great, but exercised with gentleness, generosity, and moulded by an affectionate disposition. * * * I regarded him then as I had for many years before, as the wisest man of my acquaintance; all of which may be accepted as the opinion of a brother, who had received from him more valuable service, materially and intellectually, than from all the world beside."

And on page 45 he speaks of him as a man "who never did and never could have violated a trust in fact or intent. It would have been at variance with every impulse of his nature, and would have been forbidden by every sentiment of honor and fidelity. His own conception of right and abhorrence of fraud touching such a trust voluntarily assumed, and his own enlightened conscience, would have wrought an estoppel beyond which no temptation, no sophistry, no influence of friends, no importunities of kindred, even in the weakness of old age, could have ever seduced him."

Such was the character, recognized by all who knew him, of the man against whom these charges are made.

A. M. LEA,
For Appellee.

121-421

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1325.

CAROLINE CARSON, APPELLANT,

vs.

C. T. DUNHAM.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED JANUARY 5, 1887.

SUPREME COURT OF THE UNITED STATES.

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1 THE UNITED STATES OF AMERICA, *District of South Carolina,* } *To wit:*

At a circuit court of the United States for the fourth circuit, in and for the district aforesaid, on the fourth Monday in November, A. D. 1886, before the Honorable Hugh L. Bond and the Honorable Charles H. Simonton, judges for the said United States for the district of South Carolina, holding said court; and thereupon the following proceedings were had:

C. T. DUNHAM *vs.* CAROLINE CARSON.

Be it remembered that heretofore, to wit, on the 26 October, A. D. 1886, appeared the said defendant, Caroline Carson, in the aforesaid circuit court and filed an exemplification of the record in certain proceedings in the court of common pleas for the county of
2 Berkeley, in the State of South Carolina, which exemplification is in the words and tenour following:

Exemplification of Record.

STATE OF SOUTH CAROLINA, *Berkeley County:*

Court of Common Pleas.

C. T. DUNHAM, Plaintiff, *against* CAROLINE CARSON, Defendant.

Summons.

To the defendant, Caroline Carson:

You are hereby summoned and required to answer the complaint in this action, which is filed in the office of the clerk of court of common pleas for said county, and to serve a copy of your answer to the said complaint on the subscribers, at their office, No. 31 Broad street, Charleston, S. C., within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid the plaintiff in this action will apply to the court for the relief demanded in the complaint.

(Signed) MITCHELL AND SMITH,
Pl'ff's Att'ys.

3 Mt. Pleasant, S. C., Dated Aug. 11th, 1886.

(Signed) [SEAL.] J. J. WILLIAMS,
C. C. P. and G. S.

Endorsed: Filed Aug. 11th, 1886. C. T. Dunham *vs.* Caroline Carson.

STATE OF SOUTH CAROLINA, *County of Charleston:*

I hereby certify that on the 21st day of August, A. D. 1886, at Charleston, S. C., I made due and diligent search for the within-named Caroline Carson, and return her "*non est inventus.*"

HUGH FERGUSON,
Sheriff C. County.

COURT-HOUSE, BERKELEY COUNTY,
MT. PLEASANT, *Aug.* 23, 1886.

The within-named Caroline Carson is not to be found within my county.

H. W. HENDRICKS,
Sheriff Berkeley Co.

4 *Complaint.*

THE STATE OF SOUTH CAROLINA, *Berkeley County:*

In the — Common Pleas.

C. T. DUNHAM, Plaintiff, *against* CAROLINE CARSON, Defendant.

The plaintiff above named, complaining of the defendant, respectfully shows to the court—

I. That heretofore Wm. McBurney, Wm. Hasseltine, Alfred L. Gillespie, and Thomas R. McGahan executed and delivered to Edmund Hyatt their bond, under seal, bearing date 8th May, 1863, in the penal sum of $80,000.00, conditioned for the payment to the said Edmund Hyatt of $40,000.00 on the 22nd day of April, A. D. 1868, with annual interest thereon from the 22nd day of April, A. D. 1863, payable annually.

II. That to secure the payment of the said bond, according to the true intent and meaning of the condition thereof, the said Wm. McBurney and Alfred L. Gillespie duly executed and delivered to the said Edmund Hyatt their deed, under seal, bearing date the 8th of May, 1863, whereby they declared, limited, and appointed,
5 so as to convey by way of mortgage to the said Edmund Hyatt, the following lands and premises, to wit:

All that plantation or tract of land known as Dean Hall, situate on Cooper river, in St. John's parish, Berkeley, in the district of Charleston (now county of Berkeley), in the said State of South Carolina, -butting and bounding to the east on Cooper river; to the northwest on lands formerly of William Colleton, but now or late of John Harleston and Dr. William Moultrie; to the west on White Hall plantation, hereinafter described; to the southwest on Back river; to the south on lands formerly of J. E. Holmes, now of Peter Gourdin, and having such forms, dimensions, and descriptive marks as are represented on a plat thereof made by Henry Ravenal, surveyor, in March, 1827, and containing twenty-six hundred acres, more or less; also all that tract of land, situated in the same parish, known as White Hall, bounding east on Dean Hall, northeast on lands of John Harleston and Dr. William Moultrie, northwest on lands formerly of H. S. Ball, deceased, now of James Poyas, and southwest on lands formerly of John C. Ball and afterwards of William
6 Ball, deceased, and having such forms, dimensions, and descriptive marks as are represented on a plat made by R. J. Pinckney, surveyor, in April, 1837, and containing five hundred and twenty-six acres and twenty-three hundredths of an acre, more or less; also all that parcel of land, in the same parish, containing

thirty-five acres and twenty one-hundredths of an acre, bounding north and east on Chicken creek and south and west on Medway or Back river, as the same was granted to W. A. Carson by the State aforesaid, on the 4th day of September, A. D. 1843.

III. That said mortgage was duly recorded in the office of the registrar of mesne conveyance- for Charleston district (including then what is now Berkeley county), in Book S, No. 14, page 399.

IV. That heretofore the said Edmund Hyatt departed this life, being at the time of his death still seized of and entitled to the debt secured by said bond and mortgage, and leaving a last will and testament, whereof he appointed his daughter, Mary A. Hyatt, executrix, and his son-in-law, Joaquin Delmonte, and his friend, Abram V.
7 W. Van Vechten, executors; that the said will has been duly admitted to probate in the office of the judge of probate for Charleston county, and letters testamentary thereof issued to the said Mary A. Hyatt and Joaquin Delmonte; the said Abram V. W. Van Vechten refused to qualify; that Joaquin Delmonte has since departed this life, to wit, on or about —— —, 1885; and that David F. Lee, whom the said Edmund Hyatt by his last will appointed executor thereof in case of the death of the said Joaquin Delmonte, has, as plaintiff alleges on information and belief, refused to qualify, and that therefore the said Mary A. Hyatt is, and was at the date of the assignment hereinafter mentioned, the sole surviving executrix of the last will of the said Edmund Hyatt.

V. That heretofore the said Mary A. Hyatt, as executrix and as a legatee under the will of the said Edmund Hyatt, together with Julia Delmonte, the only other legatee having any interest in said bond and mortgage and the debt thereby secured, for valuable consideration, under their hands and seals, sold, assigned, and
8 transferred and delivered to the plaintiff the aforesaid bond, together with the mortgage securing the same.

VI. That there is now due and unpaid upon the said bond and mortgage the sum of $10,000.00, with interest thereon from 1st January, 1879.

VII. That the mortgaged premises are insufficient to meet and pay the aforesaid sums so due and owing upon the said bond and mortgage.

VIII. That the defendant, Caroline Carson, is in possession of said mortgaged premises under and by virtue of a sale to her since the execution and recording of said mortgage, as plaintiff alleges on information and belief, and that no other person, save the plaintiff and the defendant, have any interest in said premises, or is a necessary party to these proceedings; and that the title of the said defendant to the said premises is subordinate and posterior in rank and time to the lien of the debt secured by the aforesaid bond and mortgage as assigned to the plaintiff.

Whereof the plaintiff prays judgment:

I. That said mortgage be foreclosed and the mortgaged premises be sold, and the proceeds, after paying the costs and expenses
9 of these proceedings and any taxes that may be a lien on

said premises, be applied to the payment of the amount due on said bond and mortgage.

II. That the defendant and all persons claiming by, thro', or under her be forever barred and foreclosed of any and all right, title, interest, estate, and equity of redemption in or to said mortgaged premises.

III. That in the meantime a fit and proper person be appointed receiver, with the usual powers of receivers in such cases, to hold said premises and the issues thereof, so that the same may be applied, so far as they will go, to the debt due on said bond and mortgage.

IV. For such other relief as may be just.

MITCHELL AND SMITH,
Pl'ff's Att'ys.

STATE OF SOUTH CAROLINA, *Charleston County:*

Personally appeared Henry A. M. Smith and made oath that he is one of the attorneys for the plaintiff above named, and that the foregoing complaint is true of his own knowledge, except as
10 to those matters therein stated on information and belief, and as to those matters he believes it to be true.

Deponent further saith that the reason this verification is not made by plaintiff is that he is not within the county of Charleston or the State of South Carolina, wherein deponent and his copartner reside; and that the deponent's knowledge and information are derived from the possession of the written instruments referred to in the complaint.

H. A. M. SMITH.

Sworn to before me this 10th day of August, 1886.
[L. S.] P. EDWIN GREGORY,
Not. Pub., S. C.

Endorsed: Filed Aug. 11th, 1886.

11 *Notice of Pendency of Action.*

THE STATE OF SOUTH CAROLINA, *County of Berkeley:*

Court of Common Pleas.

C. T. DUNHAM, Plaintiff, *against* CAROLINE CARSON, Defendant.

Notice is hereby given that an action has been commenced and is pending in this court upon a complaint of the above-named plaintiff against the above-named defendant for the foreclosure of a mortgage bearing date 8th day of May, one thousand eight hundred and sixty-three, executed by William McBurney and Alfred L. Gillespie to Edmund Hyatt, and recorded in the office of the register of mesne conveyances of the county of Charleston on the — day of ——, in the year one thousand eight hundred and sixty-three, in Book S, No. 14, page 399; and the said mortgaged premises affected by the said foreclosure were, at the time of the commencement of this
12 action, and at the time of filing this notice are, situated in

the parish of St. John's, Berkeley, in the county of Berkeley, and are described in the said mortgage as follows, to wit: All that plantation or tract of land known as Dean Hall, situate on Cooper river, in St. John's parish, Berkeley, in the district of Charleston, in the State aforesaid, butting and bounding to the east on Cooper river, to the northwest on lands formerly of William Colleton, but now or late of John Harleston and Dr. William Moultrie; to the west on White Hall plantation, hereinafter described; to the southwest on Back river; to the south on lands formerly of J. E. Holmes, now of Peter Gourdin, and having such form, dimensions, and descriptive marks as are represented on a plat thereof made by Henry Ravenel, surveyor, in March, 1827, and containing twenty-six hundred acres, more or less; also all that tract of land, situated in the same parish, known as White Hall, bounding east by Dean Hall, northeast on
lands of John Harleston and Dr. William Moultrie, north-
13 west on land formerly of N. S. Ball, deceased, now of James
Poyas, and southwest on lands formerly of John C. Ball, and afterwards of William Ball, deceased, and having such form, dimensions, and descriptive marks as are represented on a plat made by R. J. Pinckney, surveyor, in April, 1837, and containing five hundred and twenty-six acres and twenty-three hundredths of an acre, more or less; also all that parcel of land in the same parish containing thirty-five acres and twenty one-hundre-ths of an acre, bounding north & east by Chicken creek and south and west by Medway or Back river, as the same was granted to W. A. Carson by the State aforesaid on the fourth day of September A. D. 1843.

MITCHELL AND SMITH,
Plaintiff's Attorneys.

Endorsed: Filed Aug. 11, 1886.

14 THE STATE OF SOUTH CAROLINA, *Berkeley County:*

In the — Common Pleas.

C. T. DUNHAM, Plaintiff, *against* CAROLINE CARSON, Defendant.

Henry A. M. Smith, being duly sworn, makes oath—

I. That he is one of the attorneys for the plaintiff, C. T. Dunham, above named.

II. That this action is brought to foreclose a mortgage, made on the 8th May, 1863, by William McBurney and Alfred L. Gillespie to Edmund Hyatt, to secure a bond made by William McBurney, William Hasseltine, Alfred L. Gillespie, [and] Thomas R. McGahan to Edmund Hyatt, bearing date 8th May, 1863, conditioned for the payment of $40,000 on the 22nd April, 1868, on certain real property in the county of Berkeley and State of South Carolina, viz., a plantation called "Dean Hall;" another plantation, adjoining "Dean
Hall," called "White Hall," and a tract of about thirty-five
15 acres on Chicken creek, as all the same are particularly described in said mortgage, which is duly recorded in the registry of mesne conveyances for Charleston county, in Book S, No. 14, p. 399.

That the defendant, Caroline Carson, has or claims to have some lien or interest in said real property, which accrued subsequently to said mortgage, and that a part of the relief demanded by plaintiffs in this action consists in excluding said defendant from any lien on or interest in said property, and that said defendant is therefore a proper party to this action.

2. That said Caroline Carson cannot, after due diligence, be found within this State; that deponent has diligently enquired from persons likely to know, and is informed and believes that said Caroline Carson does not reside within this State, but resides at ——, in the city of Rome and Kingdom of Italy, and that her mail is addressed to Rome, in care of Messrs. Maguay and Hooker.

That deponent further deposited the summons in this action
16 in the respective offices of the sheriffs of Berkeley and Charleston (in which county, as deponent is informed, the said defendant last resided in this State), with the instructions that the same be served, and is informed by said sheriffs that the said defendant cannot be found.

HENRY A. M. SMITH.

Sworn to before me this 26 August, 1886.

[L. S.] A. G. MAGRATH,
Not. Pub.

Endorsed: Filed Aug. 26th, 1886.

THE STATE OF SOUTH CAROLINA, *Berkeley County:*

In the — Common Pleas.

C. T. DUNHAM, Plaintiff, *against* CAROLINE CARSON, Defendant.

It appearing to my satisfaction by the annexed affidavit and
17 the complaint hereinbefore filed that the defendant, Caroline Carson, cannot, after due diligence, be found within this State, and that she resides at ——, in the city of Rome, Kingdom of Italy, and that she is a proper party to this action, which relates to real property within this State, in which real property the defendant, Caroline Carson, has or claims an interest, and that the relief demanded by the plaintiff consists partly in excluding the said defendant from any lien or interest in said real property, now, on motion of Mitchell and Smith, plaintiff's counsel—

Ordered, That the summons herein (a copy whereof is hereto annexed) be served by publication of the same in the Charleston Daily News and Courier, a newspaper published in the city of Charleston and State of South Carolina, once in each week for six consecutive weeks, and that a copy of the summons be forthwith deposited in the post office, directed to the said defendant, at her said place
18 of residence, in the care of Messrs. Maguay & Hooker, and the postage paid.

Mount Pleasant, S. C., August 26th, 1886.

[SEAL.] J. J. WILLIAMS,
C. C. P. & G. S.

Endorsed: Filed 26 Aug., 1886.

STATE OF SOUTH CAROLINA, *Berkeley County:*

In the — Common Pleas.

C. T. DUNHAM, Plaintiff, *vs.* CAROLINE CARSON, Defendant.

Personally appeared Henry A. M. Smith, and made oath that he is one of the attorneys for the plaintiff herein, and that on the 26th day of August, 1886, he deposited a copy of the summons in this action in the post office at Charleston, S. C., in an envelope sealed up and directed [to] Mrs. Caroline Carson, c. o. Messrs. Maguay
19 & Hooker, Rome, Italy (she being the defendant in this action), and prepaid the postage thereon.

HENRY A. M. SMITH.

Sworn to before me this 27th August, 1886.

T. W. DINKINS,
Not. Pub.

Endorsed: Filed Aug. 27th, 1886.

It is admitted that due publication of the summons as required by the code of procedure and the order for publication was made in the Charleston Daily News and Courier, beginning 28th August, 1886, continuing weekly to 9th October, 1886.

Notice of Appearance.

STATE OF SOUTH CAROLINA, *County of Berkeley:*

Court of Common Pleas.

C. T. DUNHAM *against* CAROLINE CARSON.

Please take notice that the defendant, Caroline Carson, ap-
20 pears in this action, and that she has retained H. E. Young as attorney for her therein.

Dated Charleston, Oct. 8th, 1886.

H. E. YOUNG,
Defendant's Att'y, No. 28 *Broad St.*

To Messrs. Mitchell & Smith, plaintiff's att'ys.

Endorsed: Filed Oct. 9th, 1886.

21 THE STATE OF SOUTH CAROLINA, *County of Berkeley:*

Court of Common Pleas.

C. T. DUNHAM, Plaintiff, *vs.* CAROLINE CARSON, Defendant.

To the court of common pleas in and for the county of Berkeley, in the State of South Carolina:

The petition of Caroline Carson, the defendant above named, respectfully sheweth to the said court as follows:

The above-entitled suit has been brought and is now pending in

this honorable court. The said suit is of a civil nature, wherein the matter in dispute exceeds, exclusive of costs, the value of five hundred dollars, and arises under the Constitution and laws of the United States, in that the defendant claims and sets up as defenses thereto—

I. That all the matters therein have been already adjudged in her favor by the circuit court of the United States for the district of South Carolina.

II. That the complainant is barred of his present action by a judgment of the said court in her favor on the matter in
22 controversy.

III. That this court is without jurisdiction because a prior suit on the like matter is pending in the aforesaid court of the United States, which, by its receiver, has possession of the subject-matter of this suit.

IV. That the bond and mortgage sued on are void under the laws of the United States.

V. That the defendant holds title to Dean Hall plantation, the property involved in this suit and mentioned in the complaint in the above-entitled suit, under an authority exercised under the United States, to wit, under a conveyance from the United States marshal for the district of South Carolina, made under a decree of the United States circuit court for the said district, all of which will more fully appear by her answer.

The controversy in said suit is also wholly between citizens of different States, viz., between the said C. T. Dunham, who, as your petitioner is informed and avers, was, at the commencement of said suit, and now is, a citizen of the State of South Carolina,
23 and your petitioner, who was, at the commencement of said suit, and now is, a citizen of the State of Massachusetts; or the controversy in said suit is wholly between Mary A. Hyatt, who was, at the commencement of said suit, and now is, a citizen of the State of New York, and who is the sole and only real party in interest in said suit and in said controversy, and your petitioner, who was, at the commencement of the said suit, and now is, a citizen of the State of Massachusetts, and which controversy is the only controversy in said suit; that the said Mary A. Hyatt is the real party plaintiff in said suit, and the said C. T. Dunham is but a nominal and colorable plaintiff, and that his name has been used merely for the purpose of defeating the jurisdiction of the circuit court of the United States for the district of South Carolina, and that said suit is, in fact, a controversy wholly between the said Mary A. Hyatt and your petitioner, notwithstanding the assignment to the said
24 C. T. Dunham in the complaint in said suit mentioned. The said cause has not been tried, and the term at which it could be first tried has not begun.

Your petitioner annexes copies of the summons, complaint, and order of publication in said suit.

Your petitioner further shows that her appearance will be entered in said suit on the day of the filing of this petition and prior to the filing thereof.

And your petitioner offers herewith a bond, with good and sufficient security, for her entering in the circuit court of the United States for the district of South Carolina, on the first day of its next session, a copy of the record in this suit, and for paying all costs that may be awarded by said circuit court if such court shall hold that this suit was wrongfully or improperly removed thereto.

Wherefore your petitioner prays this honorable court to accept this her said petition and her said bond, and to proceed no
25 further in this suit, as is by law required.

And your petitioner will ever pray, & etc.

Dated September 17th, 1886.

CAROLINE CARSON,
By JAMES CARSON,
Her Attorney-in-Fact.

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

James P. Carson, being duly sworn, says: I am the attorney-in-fact of Caroline Carson, the petitioner above named, and as such have signed such petition. I have read the said petition, and know the contents thereof, and the matters and things therein stated are true, to the best of my knowledge, information, and belief.

JAMES P. CARSON.

Sworn to before me this 18th day of September, 1886.

In witness whereof I have hereunto set my hand and official seal this 18th day of September, A. D. 1886.

CHARLES NETTLETON,
Commissioner for South Carolina in New York,
115 & 117 *Broadway, N. Y. City.*

Endorsed: Filed Oct. 9, 1886.

26 Know all men by these presents that we, Clarence A. Seward, of No. 143 Fifth avenue, and William D. Guthrie, of No. 46 West 32nd street, both in the city of New York, are held and firmly bound unto C. T. Dunham and Mary A. Hyatt, and each of them, in the penal sum of one thousand dollars, lawful money of the United States of America, to be paid to the said C. T. Dunham and Mary A. Hyatt, their and each of their executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals [and] dated the 18th day of September, one thousand eight hundred and eighty-six.

Whereas a civil action has been commenced in the court of common pleas in and for the county of Berkeley, in the State of South Carolina, by the said C. T. Dunham against Caroline Carson, and in which suit the said Caroline Carson alleges that the said Mary A. Hyatt is the real party plaintiff in interest by summons, com-
27 plaint, and *and* order of publication; and

Whereas the said Caroline Carson is about to enter her appearance in said suit in the said court of common pleas and to file

a petition for the removal of said suit into the circuit court of the United States for the district of South Carolina, according to the statute in such case made and provided, and upon the grounds in said statute specified, that the said suit arises under the Constitution and laws of the United States, and that the controversy therein is wholly between citizens of different States:

Now, the condition of this obligation is such that if the said Caroline Carson shall enter in such circuit court on the first day of its next session a copy of the record in such suit, and shall pay all costs that may be awarded by the said circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and shall also there appear, then this obligation to be void; otherwise to remain in full force and virtue.

28 C. A. SEWARD. [L. S.]
WILLIAM D. GUTHRIE. [L. S.]

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

Clarence A. Seward and William D. Guthrie, being severally duly sworn, do severally depose and each for himself say that he is a citizen of the State and a resident of the city aforesaid, and that he is worth the sum of two thousand dollars over and above all his debts which he owes or has incurred and exclusive of property exempt from execution.

C. A. SEWARD. [L. S.]
WILLIAM D. GUTHRIE. [L. S.]

Sworn to before me this 18th day of September, 1886.

In witness whereof I have hereunto set my hand and affixed my official seal this 18th day of September, A. D. 1886.

[SEAL.] CHARLES NETTLETON,
Commissioner for South Carolina in New York,
115 & 117 *Broadway, N. Y. City.*

STATE, CITY, AND COUNTY OF NEW YORK, *ss:*

On this 18th day of September, 1886, before me personally appeared Clarence A. Seward and William D. Guthrie, to me
29 personally severally known and known to me severally to be the persons named in the foregoing bond, and severally acknowledged that they executed the said bond for the uses and purposes and to the intent therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 18th day of September, A. D. 1886.

CHARLES NETTLETON,
Commissioner for South Carolina in New York,
115 & 117 *Broadway, N. Y. City.*

Endorsed: Filed Oct. 9th, 1886.

C. T. DUNHAM *vs.* CAROLINE CARSON.

I hereby certify that the foregoing pages, numbered consecutively 1 to 14, inclusive, contain a true and correct copy of all the proceedings on file in this court, to wit, summons and complaint, order of publication, and petition for removal and bond accompanying same.

Oct. 26, 1886.

[L. S.] J. J. WILLIAMS,
C. C. P. & G. S.

30 And thereafter, to wit, on 27th Oct., 1886, came the said Caroline Carson and filed her answer in said circuit court in words and tenor following:

Answer of Caroline Carson.

In the Circuit Court of the United States for the District of South Carolina. In Equity.

C. T. DUNHAM *vs.* CAROLINE CARSON.

The defendant, Caroline Carson, for answer to the bill of complaint herein, says:

I. Her husband, William A. Carson, of the parish of St. John's, Berkeley, of Charleston county, in the State of South Carolina, did, by his last will and testament, bearing date the 11th day of March, A. D. 1854, after making certain specific bequests, direct his executors or such one as might qualify to sell the residue of his estate; out of the proceeds of sale to pay his debts; to divide the balance of such proceeds into three equal parts, to hold one such third part in trust for his wife, Caroline Carson, the defendant, during
31 her life, and to hold in trust the other two-third parts for his sons, William Carson and James Petigew Carson, to be paid to them absolutely on their attaining the age of twenty-one years, the rest and residue of his estate, including the remainder in the one-third part to be held in trust for his wife, [to] be bequeathed to his two said sons to vest absolutely on their attaining the age of twenty-one years. He appointed Alexander Robertson and John Freer Blacklock executors of his will and testament and guardian of his sons, and also appointed them trustees to receive and hold the portions set apart for his said wife for life and for his said sons.

II. William A. Carson died on the 17th August, 1856, and Alexander Robertson and John Freer Blacklock proved his will in the court of ordinary of Charleston county, and there qualified as executors and proceeded to sell the testator's estate and to execute his will. One part of his estate sold by them was a valuable rice plantation not far from the city of Charleston, known as Dean Hall, which they sold to Elias N. Ball for $50,000. For the unpaid portion of the purchase-money Elias N. Ball, on the 2nd March, 1857, executed to the said executors three bonds, each in the penal
32 sum of $18,000, and two each in the penal sum of $8,000, conditioned, the three first named each for the payment of

$9,000, and the two last named for the payment of $4,000, in five equal successive annual instalments, from the 14th January, 1857, with interest from this date, payable annually. To secure these bonds Elias N. Ball, on the 2nd March, 1857, executed to the said executors a conveyance, by way of mortgage, of Dean Hall, which mortgage was, on the 11th March, 1857, duly recorded in the mesne conveyance office of Charleston county. On or before the 4th June, 1857, the said executors had sold the whole of the testator's estate and paid his debts, and they thereupon made distribution of the testator's estate, and, in their character of executors, transferred to themselves, as trustees under the said will, the above-mentioned bonds and mortgages, viz: To themselves, as trustees of the defendant, one bond of $9,000 and one-third interest in one bond of $4,000, and to themselves, as trustees of her two sons, for each the same amount in bonds, making an aggregate of $31,000 in bonds. They then took and held as trustees the mortgage of Dean Hall, securing the said bonds of $31,000.

33 IV. The defendant, who during the war adhered to the cause of the Union, early in 1861 left South Carolina and went to New York, where she resided and had her domicile until July, 1877, when she became a citizen of Massachusetts, of which State she is now a citizen. She alleges that her absence from South Carolina was matter of notoriety, and was known to the said William McBurney and his copartners. Her son, William Carson, who came of age after 1863, left South Carolina and the Confederate States before the war began, and has been absent ever since, except for a short period subsequent to 1878. Her son, James F. Carson, came of age after the end of the late war. John Freer Blacklock was absent from the United States during the whole of the late war.

V. In March, 1863, the firm of Hyatt, McBurney & Company, of Charleston, South Carolina, the copartners of which were Edmund Hyatt, William McBurney, William Hasseltine, Thomas R. McGahan, and Alfred L. Gillespie, entered into negotiations with the said Elias N. Ball for the purchase of the said Dean Hall. Finding the legal title encumbered with the said mortgage to the trustees of this defendant and her infant sons, the said Hyatt, McBurney

34 and Company furnished to the said Ball their Confederate treasury notes of the nominal amount of the debt secured by the mortgage of Dean Hall, and induced and procured the said Elias N. Ball to obtain therewith a surrender of the aforesaid bonds and mortgage by Alexander Robertson, the only trustee then in America, the said Blacklock being then in Europe. The said Elias N. Ball, at the instance and request of the said Hyatt, McBurney and Company, thereupon induced and procured the said Robertson, in breach of his trust, to surrender the said bonds and mortgage in consideration of the delivery to him of the said Confederate treasury notes. Thereupon, on the 23rd April, 1863, the said Ball conveyed Dean Hall to the said William McBurney and Alfred L. Gillespie, in trust, for and to the use of the several copartners of the said firm of Hyatt, McBurney and Company, in proportion to their respective interests in the said copartnership.

VI. On the 8th of May, 1863, Edmund Hyatt, as this defendant is informed and believes, came to a settlement with his copartners, and took in satisfaction of his interest in the firm of Hyatt,
35 McBurney and Co., and with full knowledge of the facts connected therewith, the bond and mortgage which the complainant is seeking to enforce in this suit. The defendant is informed and believes that no new consideration moved between the said Edmund Hyatt and his partners for the said mortgage. The said Edmund Hyatt acquired thereby no higher or other interest in Dean Hall than he had under the said deed and no other interest than his partnership equity in Dean Hall. His said bond was made in reference to Confederate treasury notes, and by the dollars therein expressed were intended the said notes.

VII. The said mortgage held by the said Alexander Robertson and John Freer Blacklock, trustees, was not satisfied until the 21st of July, A. D. 1866, when the said Alexander Robertson alone, at the instance, as this defendant believes, of McBurney, executed a satisfaction of it.

VIII. The defendant was in New York at the time of the said transactions, and then knew nothing of them, and as soon as she heard of them repudiated them. Her sons were then both under age, and in coming of age repudiated them. The trustee, John Freer Blacklock, was at the time in Europe, and has repudi-
36 ated them and refused to join in the satisfaction. In July, 1866, her sons assigned to the defendant all of their interest in the said bonds and mortgage.

IX. At the time of the surrender of the said bonds to the said Hyatt, McBurney and Company by the said Alex'r Robertson they could have been exchanged in the market for more than double the amount in Confederate treasury notes of their face value.

X. On the 11th of August, 1866, this defendant impleaded in the circuit court of the United States for the district of South Carolina all of the copartners of the said Hyatt, McBurney and Co. except the said Edmund Hyatt, who could not be made a party by reason of his citizenship, in respect of the matters hereinbefore set forth, and prayed that the said bonds surrendered by the said Alex'r Robertson be declared valid and subsisting securities, and that the mortgage securing them be declared a valid and subsisting lien on Dean Hall, and praying a foreclosure thereof, and it was so duly decreed by the said court on the 10th of May, A. D. 1878, which said decree was affirmed by the Supreme Court at its October term, 1878.
37 In pursuance of the said decree Dean Hall was sold to this defendant by the marshal of the district of South Carolina, at public outcry, on the 26th of November, 1879, for the sum of — dollars, and duly conveyed to this defendant.

XI. About the 15th day of October, A. D. 1879, Mary A. Hyatt, as ex'ix and as devisee and as heir-at-law of the said Edmund Hyatt; Joaquin Delmonte, ex'or of the said Edmund Hyatt, deceased; Mary E. Hyatt, widow and heir-at-law of the said Edmund Hyatt, and Julia Delmonte, as devisee and heir-at-law of the said Edmund Hyatt, brought an action against William McBurney, William Has-

seltine, Albert L. Gillespie, and Thomas R. McGahan, members of the late firm of Hyatt, McBurney and Company, and this defendant in the court of common pleas of Charleston, of the State of South Carolina, to obtain an account of the amount due on the said bond given to Edmund Hyatt and to foreclose the mortgage securing the same, and to obtain a sale of the mortgaged premises, to wit, the said Dean Hall, to satisfy the said bond. The defendant duly answered the complaint. Issue was joined in the said action between the plaintiffs and this defendant, and the plaintiffs introduced
38 evidence to sustain the issue on their part, and closed their evidence. Thereafter the said action was removed into this court, and this court was adjudged by the decree of the Supreme Court of the United States to take jurisdiction and proceed to a final determination of the matter in controversy. On the motion of the complainant, on the — day of ——, A. D. 1868, an order of discontinuance was entered in the said action.

XII. The alleged assignment of the said bond and mortgage to C. T. Dunham was made after the discontinuance of the said last-mentioned action. This defendant charges that the said assignment was made to defeat the jurisdiction of this court, and is pretensive and without consideration, and is not meant to transfer to C. T. Dunham the real interest in the said bond and mortgage; that the real interest therein remains in the assignors, and that there is an agreement or understanding between the assignors and C. T. Dunham that he is to prosecute, or permit to be prosecuted, this action for the benefit of the executors of Hyatt or his personal representatives, who are the persons having the real interest in the said bond and mortgage.

39 XIII. At the time of the aforesaid purchase of Dean Hall from the said Elias N. Ball the firm of Hyatt, McBurney and Company and all the members of the firm had notice of the aforesaid facts of the rights of the defendant and her sons, of the said acts and doings of Ball and Robertson, of the void and voidable character of the surrender of the said bond, and of the satisfaction of the said mortgage. The said Edmund Hyatt had like notice when he took his said bond and mortgage, and C. T. Dunham had like notice when he took his alleged assignment.

XIV. This defendant avers that her said bond and mortgage are prior in date to the bond and mortgage sought to be enforced in this suit, that the alleged satisfaction of her bond and mortgage were in operation, and that the complainant cannot enforce his said lien except as junior to that of this defendant.

XV. The defendant avers that the complainant is estopped by the aforesaid decree in the tenth paragraph mentioned from denying the validity of the said bonds and mortgage of this defendant and their priority to the bond and mortgage which the complainant is seeking to enforce, and she says the complainant cannot en-
40 force the said bond and mortgage without first redeeming the mortgage of this defendant or otherwise conceding its priority.

XVI. The defendant avers that the aforesaid decree in the eleventh

paragraph mentioned is a bar to the present action, and she prays the same benefit of this defence as if it had been made by way of plea.

XVII. The defendant avers that a suit is now pending in this court wherein all the issues involved in this action are raised; that the said suit was begun before this present suit, and that this court obtained jurisdiction thereof before any court obtained jurisdiction of this present suit, and she says that by reason of the said suit the court of common pleas of Berkeley county then had and now has no jurisdiction of this action.

XVIII. When the bond and mortgage which the complainant is seeking to enforce were executed to the said Edmund Hyatt the said Edmund Hyatt was a citizen and a resident of the State of New York, a loyal State, and the obligors of the said bond, and the makers of the said mortgage were citizens of the State of South Carolina, which was then in rebellion against the United States; and this defendant avers that the said bond and mortgage
41 were void under the laws of the United States.

XIX. The bond which is sought to be enforced in this suit is not the bond of the defendant, but the bond of William McBurney, William Hasseltine, Alfred L. Gillespie, and Thomas R. McGahan. This defendant is informed and believes that the said debtors deny their liability on the said bond, and she avers that if such denial be true the complainant has no cause of action. She further avers that if the said denial is not true the said obligors are bound to pay the said debt and thereby to exonerate this defendant in respect thereto, and that it is contrary to equity and good conscience that the complainant should pursue his remedy by way of foreclosure before he shall have exhausted his remedy against the obligors of the bond.

XX. The defendant avers that the copartners of McBurney, Hyatt and Co. and the said Mary E. Hyatt, executrix, are necessary parties to this suit, and can be made parties without ousting the jurisdiction of this court, and she prays the same advantage of this
42 objection as if it had been made by way of plea. She can neither admit nor deny the allegations of the bill of complaint further than they are herein admitted or denied.

And she prays to be hence dismissed, with her reasonable costs; and she will ever pray, &c.

A. G. MAGRATH,
H. E. YOUNG,
Att'ys for Mrs. Carson.

JAMES LOWNDES,
CLARENCE A. SEWARD,
Of Counsel.

STATE OF SOUTH CAROLINA, *County of Charleston:*

Personally came before me Henry E. Young, one of the attorneys for the defendant, who, being duly sworn, says that the said defendant being without the limits of this State, he deposes that the foregoing answer is true, of his own knowledge, except as to the matters

therein stated on information and belief, and as to those matters he believes it to be true, his information being derived from the records in prior cases and statements of the parties.

H. E. YOUNG.

Sworn to before me this 27th day of October, 1886.
BENJ. H. RUTLEDGE, JR.,
Notary Public.

43 And thereafter, to wit, on the 11th Nov'r, 1886, came the said C. T. Dunham and filed his answer and plea to said petition for removal in words and tenor following:

Answer of C. T. Dunham to Petition for Removal.

In the Circuit Court of the United States for the District of South Carolina. In Equity.

In Re C. T. DUNHAM, Plaintiff,
vs.
CAROLINE CARSON, Defendant..

Ex Parte CAROLINE CARSON.

Petition for removal of cause from State court.

The answer of C. T. Dunham to the petition of Caroline Carson for the removal of the above cause to this court.

C. T. Dunham, plaintiff above named, not admitting or waiving any exception or objection soever to the jurisdiction of this
44 court over the above cause and to the removal thereof, for answer to the said petition, and for cause why this action should not be removed, respectfully shows:

He denies that the controversy in said cause is one wholly between citizens of different States, but, on the contrary, avers that the same is a controversy wholly between citizens of the same State; and denies that he is, or was at the commencement of this action, a citizen of the State of South Carolina, but avers that he is, and was at such commencement, a citizen of the same State as the said Caroline Carson, to wit, the State of Massachusetts.

He denies further that Mary Hyatt is the sole and only real party in interest and real party plaintiff, and that he is but a nominal and colorable plaintiff, but, on the contrary, avers that he is the true and real party plaintiff, and that Mary A. Hyatt has no interest
45 whatsoever in the cause of action herein; and he denies that this controversy is in fact a controversy between the said Mary A. Hyatt and the said Caroline Carson.

And, further answering, this deponent denies every other matter and thing alleged in the several and respective articles of said petition, and alleges that this court has no jurisdiction of the action

aforesaid, nor any cause or right to remove the same to the proper court of the State of South Carolina.

MITCHELL & SMITH,
Defendant's Attorneys.

CHARLESTON, S. C., *Nov. 4th*, 1886.

We hereby certify that, in our opinion, the plea contained in the foregoing answer is well founded in point of fact.

MITCHELL & SMITH, *Solicitors.*

UNITED STATES OF AMERICA, *District of Massachusetts:*

Personally appeared before me C. T. Dunham, defendant
46 above named, and, being duly sworn, saith that the foregoing answer is not intended for delay, and that it is true in point of fact.

(Signed) C. T. DUNHAM.

Sworn and subscribed this ninth day of November, 1886, as witness my hand and official seal, at the city of Boston.

[L. S.] SAMUEL JENNISON,
Notary Public and Commissioner for South Carolina.

And on the 15th November, 1886, the said Caroline Carson filed a general replication to the same.

And thereafter, to wit, on 27 Nov'r, 1886 (after due notice thereof), a motion for a trial of the issues arising upon the petition for removal and answer thereto came on to be heard before the circuit court aforesaid; and thereupon the following order was made:

Order for Trial.

C. T. DUNHAM *vs.* CAROLINE CARSON.

47 *Ex Parte* CAROLINE CARSON.

On hearing the motion for an issue herein to determine the question of citizenship, and counsel on both sides having been heard, it is thereupon ordered that the issues arising under the petition for removal and the answer thereto be set down for trial before this court at Charleston on Monday, 20th December, 1886, at 11 o'clock a. m., and that on such trial the burden shall be upon the defendant, Caroline Carson, to show that the plaintiff, C. T. Dunham, is not a citizen of the State of Massachusetts.

Nov. 27, 1886.

CHARLES H. SIMONTON,
District Judge of the U. S.

And thereafter, to wit, on 7th December, 1886, by and with consent of all the counsel in the cause, the cause came on to be tried

and was tried before the Honorable Hugh L. Bond and
48 Charles H. Simonton, judges of the said circuit court, upon the pleadings and the evidence as follows, to wit:

Evidence on Behalf of the Petitioner, Caroline Carson.

UNITED STATES OF AMERICA, *South Carolina District:*

Fourth Circuit. In Equity.

CAROLINE CARSON *vs.* WM. MCBURNEY and Others.

Deed of U. S. marshal.

To all to whom these presents may concern I, R. M. Wallace, marshal of the United States for the district of South Carolina, send Greeting:

Whereas by virtue of a decretal order of the circuit court of the United States sitting for the district of South Carolina, dated the twenty-eighth (28th) day of May, A. D. 1879, to me directed, commanding me to sell the real estate described in the mortgage in the above-stated case, I did, after having given due and lawful
49 notice, sell, on Tuesday, the twenty-fifth (25th) day of November, A. D. 1879, in front of the post office, in the city of Charleston, So. Ca., the following-described property, to wit: All that plantation or tract of land known as Dean Hall, situate, lying, and being on Cooper river, in St. John's, Berkeley, parish, in the district, now county, of Charleston, and State of South Carolina, -butting and bounding to the east on Cooper river, the northwest on lands formerly of William Harleston, now of John Harleston, and Dr. William Moultrie, to the west on White Hall plantation, to the southwest on Back river, and to the south on lands formerly of Isaac E. Holmes, now of ——, containing twenty-six hundred acres, more or less; also all that tract of land situate in the same parish aforesaid, known as White Hall, -butting and bounding on the east on Dean Hall plantation aforesaid, to the northeast on lands of John Harleston and Dr. William Moultrie, to the northwest
50 on lands formerly of Hugh Swinton Ball, Esq., deceased, now of ——, and on the southwest on lands formerly of John C. Ball and lately of William Ball, Esq., deceased, having such forms, dimensions, and descriptive marks as are represented on a plat made by R. J. Pinckney, surveyor, in April, 1837, and containing five hundred and twenty-six $\frac{23}{100}$ acres, be the same more or less; also all that parcel of land in the parish aforesaid, containing thirty-five $\frac{20}{100}$ acres, bounding on the north and east by Chicken Creek, to the south and west on Medway on Back river, unto Caroline Carson, for the sum of fifty-two hundred dollars, the receipt whereof is hereby acknowledged, she being at that price the highest and last bidder of the same.

Now, therefore, in pursuance of the said order, and in consideration of fifty-two hundred dollars to me in hand paid by the said Caroline Carson, I have granted, bargained, and sold, and by

51 these presents do grant, bargain, sell, and convey, unto the said Caroline Carson, and her heirs and assigns, the aforesaid tracts of land, together with all and singular the members and appurtenances thereunto belonging, and all estate, title, and interest which the said defendants in the said suit of right had in and to the same; to have and to hold the said premises, with all the appurtenances, unto the said Caroline Carson, her heirs and assigns, forever.

In witness whereof I have hereunto set my hand and seal this twenty-sixth day of November, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.] R. M. WALLACE,
U. S. Marshal, Dist. So. Ca.

Signed, sealed, and delivered in the presence of—
JAS. S. SIMONS.
EMIL GERISCH.

52 UNITED STATES OF AMERICA, *South Carolina District:*

Personally appeared Jas. S. Simons, who made oath that he was present and saw R. M. Wallace, marshal of the United States for the district of South Carolina, sign, seal, and, as his act and deed, deliver the within instrument of writing, and that deponent, with E. Gerisch, attested the execution thereof.

JAS. S. SIMONS.

Sworn to before me this twenty-sixth day of November, A. D. 1879.

[SEAL.] E. M. SEABROOK,
C. D. C. U. S., So. Ca.

Endorsed.

R. M. Wallace, U. S. marshal, to Caroline Carson.

MESNE CONVEYANCE OFFICE,
CHARLESTON COUNTY.

The within deed is duly recorded in this office this 23rd of January, 1880, in Book V, 17, page- 500, 501, 502.

C. KERISON, JR., *R. M. C.*

53 Proceedings in the case of Caroline Carson against Robertson and Blacklock, executors, and others, as stated in the cases of Robertson *vs.* Carson, 19 Wall., 74, with the following circuit decree, and the subsequent proceedings, as reported in McBurney *vs.* Carson, 99 U. S., 567, which cause it is admitted has been entirely ended and the costs paid, and the sale by the marshal confirmed in the cause.

Decree.

In the Circuit Court of the United States, Fourth Circuit, District of South Carolina. April Term, 1878. In Equity.

CAROLINE CARSON *vs.* ALEXANDER ROBERTSON *et al.*

On hearing the pleadings, evidence, and arguments of counsel in this cause, it is now ordered, adjudged, and decreed that the bonds of Elias N. Ball to Alexander Robertson and John F. Black-
54 lock, described in the pleadings and secured by the mortgage of Dean Hall, are valid, unsatisfied, and subsisting securities, and that the debts secured thereby are due and payable to the complainant, and that the mortgage of Dean Hall, described in the pleadings, given by Elias N. Ball to secure the said bonds, is a valid, unsatisfied, and subsisting mortgage, securing the payment of the said bonds.

It is further ordered, adjudged, and decreed that the entry of satisfaction made on the said mortgage is null and void, and that the parties to this cause, in whose possession or control the said bonds, or any of them, and the said mortgage, may be, do surrender them to the complainant, and that the same are her property.

It is further ordered, adjudged, and decreed that the sum of $31,000, with interest thereon, payable annually, from the 23rd
55 April, 1863, is now due and payable on the said bonds to the complainant, and that the said sum is a lien and charge on Dean Hall plantation in favor of the complainant.

It is further ordered, adjudged, and decreed that the parties in interest have leave until the first day of August, 1878, to pay the said debt, and that if it be not paid on that day the equity of redemption of all the parties to this suit and of Hyatt, McBurney & Co. in the said Dean Hall plantation be forever barred and foreclosure, and that the marshal of this court do then sell the said plantation, after due notice, at public auction, in the city of Charleston, on the following terms, viz., one-fourth cash and the balance in three equal successive annual instalments, the credit portion to bear interest, payable annually, and to be secured by a mortgage of the said
56 plantation, and that he convey the property to the purchaser, and that he do, after paying the expenses of the said sale, apply the cash proceeds to the satisfaction of the complainant's debt, if so much be necessary, and that if necessary he assign to her the bonds of the purchaser in satisfaction of her debt, or so much of them as may be necessary, and that any remaining after the satisfaction of her claim be held subject to the order of the court as to the right of the party entitled thereto, and who may apply for orders for

the delivery of the same, but the bonds assigned to the complainant shall be a first lien on Dean Hall.

It is further ordered, adjudged, and decreed that if the complainant become the purchaser of Dean Hall at the said sale the marshal do set off her said debt, or so much as may be necessary, against her bid.

57 It is further ordered, adjudged, and decreed that the defendants, except John F. Blacklock, pay the costs of this suit, and that the defendant Blacklock pay his own costs.

10th May, 1878.

HUGH L. BOND.

58 Proceedings in the cause of Caroline Carson against Wm. McBurney, Alfred Haseltine, and T. R. McGahan as follows:

Original Bill.

THE UNITED STATES OF AMERICA, *District of South Carolina:*

In the Circuit Court. In Equity.

To the judges of the circuit court of the United States for the said district:

59 Caroline Carson, a citizen of the State of Massachusetts, brings this her bill of complaint against William McBurney and Thomas R. McGahan, both citizens of the State of South Carolina; Alfred L. Gillespie, a citizen of the State of Tennessee, and William Haseltine, a citizen of the State of California.

And thereupon your oratrix complains and says:

I. She was heretofore the owner and holder of certain bonds made by one Elias N. Ball, secured by a mortgage of a certain plantation known as Dean Hall, situated in the parish of St. John's, Berkeley, in the county of Charleston, of the State aforesaid, and of the value of about twenty thousand dollars (20,000).

II. The said Ball, in eighteen hundred and sixty-three (1863), sold Dean Hall to the defendants, together with Edmund Hyatt, their copartner in trade under the name of Hyatt, McBurney and Company. The said Hyatt soon thereafter released his interest as copartner in Dean Hall to the defendants, who executed to

60 him their bond in the sum of $——, and secured the same by a mortgage of the said Dean Hall.

III. In eighteen hundred and sixty-six (1866) the complainant filed her bill in this court against the defendants to foreclose her said mortgage. The defendants denied the validity of her mortgage and resisted the same; but this court declared her said mortgage to be a valid and subsisting lien on Dean Hall as against the defendants, and decreed a sale thereof to satisfy the same.

IV. The said Hyatt could not be made a party to her said suit by reason of his citizenship; but the complainant denies that the said mortgage, given to him by the defendants, is as against her mortgage a paramount lien.

V. Under the decree of this court the said Dean Hall was sold

and conveyed to the complainant on the twenty-sixth of November, eighteen hundred and seventy-nine (1879).

61 VI. The executors of the said Hyatt, who has died, have brought suit in the court of South Carolina against the complainant to foreclose their said mortgage.

VII. While the complainant denies that the mortgage of Hyatt is paramount to her mortgage, or this Hyatt or his executors have any better rights in Dean Hall as against the complainant than the defendants, she is apprehensive that the courts of South Carolina will not take the view of her rights which has been taken by this court and the Supreme Court of the United States.

She says that the said bond of Hyatt, secured by the mortgage of Dean Hall, is the debt of the defendants, which they are bound to pay; that the said decree in this court in her said suit, the record of which she prays may be taken as a part of this bill, estops the defendant from claiming the right as against her to make any

62 mortgage of Dean Hall, which would affect her interests; that such mortgage, as against her, is void, and she submits that she is entitled to be subrogated by the defendants from this charge on Dean Hall, which they have put upon Dean Hall.

Wherefore she prays that the defendants may be decreed to exonerate her in the premises by paying to the executors of Hyatt the sum due on their said bond, and to pay to the complainant any sums she may be compelled to pay to the executors of Hyatt to save Dean Hall from sale in the said suit, or the value of the said Dean Hall, if the same shall be sold in said suit, and all expenses and costs she may be put to by the said suit; and so — necessary she prays to be subrogated to the rights of the said executors in the said bond.

May it please your honors to grant unto your oratrix a writ of subpœna, to be directed to the said William McBurney, Thomas R. McGahan, Alfred L. Gillespie, and William Haseltine, com-

63 manding them, at a certain day and under a certain pain therein to be limited, personally to be and appear before your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein as to your honors shall seem meet.

And your orators will ever pray, and so forth.

JAMES LOWNDES,
Comp's Sol'r.

Endorsed: Filed 5th October, 1880.

Demurrer.

THE UNITED STATES OF AMERICA, *District of South Carolina:*

In the Circuit Court. In Equity.

The answer of William McBurney and Thomas R. McGahan, citizens of the State of South Carolina, to the bill of complaint
64 of Caroline Carson, alleging herself a citizen of the State of Massachusetts.

1. These defendants deny that Caroline Carson is a citizen of the State of Massachusetts, as alleged in the said bill of complaint.

2. That these defendants, answering, say that the said Edmund Hyatt mentioned in the said bill if living would have been an indispensable party to these proceedings, but that the said Edmund Hyatt has departed this life, leaving a last will and testament, whereby he appointed Mary A. Hyatt executrix and Joaquin Delmonte executor thereof, who have duly qualified thereon as such, and that the said Mary A. Hyatt and Joaquin Delmonte, as the representatives of the said Edmund Hyatt, are indispensable parties to these proceedings; and these defendants rely upon the want of parties now stated and shown to the court as an insuperable ob-
65 jection to the jurisdiction of this court, sitting as a court of equity, and claim to be allowed to insist upon this want of parties in the same manner as if they had pleaded the said bill.

3. These defendants, by protestation, not confessing all or any of the matters and things in the said complainant's bill contained to be true in such manner and form as the same are therein set forth and alleged, *to* demur to the said bill, and for cause of the demurrer show that the said complainant has not by her said bill made such case as entitles her to any relief against them as to the matters complained of in said bill, or any such matters. Wherefore, and for divers other good causes of demurrer appearing in the said bill, these defendants do demur thereto, and they pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, and they pray to be dis-
66 missed from hence with their reasonable costs in their behalf sustained.

McCRADY & SON.

Personally appeared before me William McBurney, one of the above-named defendants, who, being duly sworn, says that the foregoing answer is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true, and that the demurrer above is not interposed for the purpose of delay.

WM. McBURNEY.

E. M. MORELAND,
Notary Public.

We hereby certify that, in our opinion, the above demurrer in this case is well founded in point of law.

McCRADY & SON.

Endorsed: Filed 20 November, 1880.

67 UNITED STATES OF AMERICA,
District of South Carolina:

In the Circuit Court.

CAROLINE CARSON *vs.* WM. MCBURNEY *et al.*

On motion of A. G. Magrath & H. E. Young, complainant's solicitors, it is ordered that the complainant have leave to file such supplemental bill in this cause as she may be advised is proper or necessary for her interest.

Sept. 7th, 1886.

HUGH L. BOND,
C't Judge.

Endorsed: Filed Sept. 11th, 1886.

68 THE UNITED STATES OF AMERICA,
Fourth Circuit, South Carolina District:

In the Circuit Court.

To the judges of the circuit court of the United States for the district of South Carolina:

Caroline Carson, a citizen of the State of Massachusetts, by leave of the court for this purpose first had and obtained, brings this her supplemental bill of complaint, against Mary A. Hyatt as executrix and devisee and heir-at-law of the late Edmund Hyatt; Mary E. Hyatt, widow and heir-at-law of the said Edmund Hyatt, deceased; and Abraham W. Van Vechten, as executor of the said Edmund Hyatt, deceased; and Julia Delmonte, heir-at-law of said Edmund Hyatt, each and every of the said defendants citizens of the State of New York; William McBurney, Thomas R. McGahan, both citizens of the State of South Carolina; Alfred L. Gillespie, a citizen of the State of Tennessee; William Hasseltine, a citizen of the State of California; and C. T. Dunham, a citizen of the State of South Carolina.

69 And thereupon your oratrix complains and says:

That heretofore, to wit, on the 11th day of August, A. D. 1866, your oratrix filed a bill in this honorable court against Alexander *Alexander* Robertson, John F. Blacklock, William McBurney, Elias N. Ball, William Ball, William Carson, and James Petigew Carson, defendants, wherein she sets forth that she held a mortgage upon Dean Hall plantation, a tract of land in the district aforesaid; that the said mortgage was to secure a bond of the said Elias W. Ball for the purchase-money thereof; that the said William McBurney, during the late war, had bought the said plantation from the said Elias N. Ball, and that the said Alexander Robertson, one of the

trustees under her husband's, the late William A. Carson's, will, without right or authority, had received Confederate notes from the said William McBurney, acting for the said Ball, for the said pur-
70 chase-money bond, and illegally and without the sanction of his cotrustees, the said John F. Blacklock, had entered satisfaction upon the said purchase-money mortgage; that the said William McBurney had really bought the said plantation for and in behalf of the firm of Hyatt, McBurney & Co., of which firm, at the date of the purchase, the said William McBurney, Edmund Hyatt, now dead, Thomas R. McGahan, Alfred Gillespie, and William Hasseltine, were partners; that the title of the said plantation was in the said William McBurney and Alfred Gillespie, but really to the use of the said firm; that subsequent to the said purchase by the said William McBurney, the said firm of Hyatt, McBurney & Company was dissolved, and that, to adjust the balances between the said partners and to secure to the said Edmund Hyatt his share of the assets therein, the said William McBurney and Alfred Gillespie, at the instance and request of said partners, mortgaged the said plantation to the said Edmund Hyatt to secure
71 to him a bond of forty thousand (40,000) dollars, representing his supposed share in the said partnership assets; and that your oratrix charged that such satisfaction, made by the said Alexander Robertson, was null and void, and that the purchase-money mortgage held by her was a first lien on the said Dean Hall plantation, and prayed a declaration to this effect, a foreclosure of her mortgage, and that the said plantation be sold and the proceeds applied to paying, in the first place, the debt due to your oratrix.

That the said bill was amended from time to time and new parties, to wit, the said Alfred Gillespie, William Hasseltine, Thomas R. McGahan, and also one Elias N. Miller, assignee in bankruptcy of the said Elias N. Ball, were made parties thereto; a supplemental bill thereto was also filed; that finally the case came on for hearing in the circuit court of the United States for the district aforesaid, at the April term, 1878, of the said court, and upon the hear-
72 ing thereof, and the argument of counsel, the presiding judge the Hon. Hugh L. Bond, on the 10th day of May, 1878, filed his decree in the cause, wherein and whereby it was decreed as follows:

That the said purchase-money bond of Elias N. Ball, held by your oratrix, was secured by a first lien on the said plantation by her mortgage.

That there was then due upon it the sum of thirty-one thousand (31,000) dollars, with interest thereon, payable annually from the 24th day of April, 1863.

That the parties in interest have leave until the 1st day of August, 1878, to pay the said bond, and that if not paid on that day the equity of redemption of all the parties to the suit and of Hyatt, McBurney & Company be forever barred and foreclosed, and that the marshall of the said court shall sell the said plantation, after usual advertisement, at public auction, and convey the property to the purchaser.

That the marshal apply the proceeds of sale to the pay-
73 ment, in the first place, of the expenses of the sale; then to the debt due to your oratrix, and the remainder of the purchase-money, if any, be held subject to the order of the court.

That an appeal from the said decree was taken by the said William McBurney and Thomas R. McGahan, and on said appeal the said decreed was affirmed. (99 U. S., 569.)

That the said plantation was shortly thereafter exposed for sale by the said marshal under the said decree, and bought by your oratrix for the sum of — dollars, and by deed bearing date 26 November, A. D. 1879, duly conveyed to her by the said marshal, and has ever since been held and possessed by her, except for a short time when, as hereinafter stated, it was in the hands of a receiver, and is now in her possession.

That the said Edmund Hyatt was not a party to the said suit.

That subsequently to the decision of the same, and in order
74 to avoid the effect of the decree of the said Supreme Court of the United States, to wit, on or about the 15th day of October, 1879, the executor and executrix and heirs-at-law of the said Edmund Hyatt, he having died in the meanwhile, to wit, the said Mary A. Hyatt, Mary E. Hyatt, Julia Delmonte, and Joaquin Delmonte, filed their bill in the court of common pleas (equity side) for Charleston county and State of South Carolina, practically renewing the questions made in the suit of your oratrix above set forth, as filed and decided in the circuit court of the United States for the said South Carolina district, and the Supreme Court of the United States.

That in this suit the said Dean Hall plantation was put in the hands of a receiver to await the issue of said suit.

That your oratrix duly filed a petition for removal of the said cause to the circuit court of the United States, but the same
75 was refused by said court of common pleas; that the said court of common pleas and the supreme court of the State of South Carolina, in disregard of your oratrix' said petition, proceeded to the hearing of the said cause, and, refusing to give any weight to the said decree of the Supreme Court of United States, held that the mortgage for the purchase-money held by your oratrix had been duly satisfied, and that the mortgage given by the partners of Hyatt to Hyatt was a prior lien on the said plantation, and ordered the same sold for the satisfaction thereof and the proceeds of such sale to be applied, after payment of costs and expenses of sale, first, to the payment of the mortgage debt due by the partners of Hyatt to Hyatt, and then the surplus, if any, to your oratrix.

That your oratrix thereupon took the cause by writ of error to the Supreme Court of the United States, and by its decree the said petition of your oratrix for the removal of the cause to the
76 circuit court of the United States was held to have been duly filed, and that all proceedings of the State court thereafter, (namely, February 16th, 1880), including the final decree therein, were null and void, and it was decreed that the same be set aside

and the cause remanded to the circuit court of the United States for final determination.

Your oratrix craves leave to refer to the proceedings in the said several suits, to wit, the two causes entitled Carson *vs.* Robertson *et al.* and the supplemental bill herein, and the said cause entitled Hyatt *et al. vs.* McBurney, Carson, *et al.*, and to the proceedings therein, whenever the same is necessary, though by reason of their great length they are not here more particularly set out by copies.

That, again, to avoid the force and effect of the decree of this honorable court, and of the Supreme Court of the United States, the said Mary A. Hyatt, Mary E. Hyatt, and Julia Delmonte,
77 (the said Joaquin Delmonte having previously died), did, on the — day of ——, 1886, discontinue their said suits in the said United States circuit court, and fraudulently and collusively and without consideration, at the instigation of the said William McBurney, in order to avoid the decree of this court, assign and set over, or pretend to assign and set over, the said bond made by Hyatt's partners to Hyatt, which has been the subject of two suits in this court, to one C. T. Dunham, an alleged citizen of Massachusetts, in order to defeat the jurisdiction of this court and to nullify its decrees.

That heretofore, to wit, on the 5th of October, 1881, your oratrix filed in this court her bill against William McBurney, Thomas R. McGahan, Alfred L. Gillespie, and William Haseltine, citizens of the several States hereinbefore alleged, setting out substantially the above facts, so far as they had then happened, in regard
78 to the said bonds and mortgages, and claiming that she was entitled to be exonerated by the said defendants in that suit from the charge created by them on the said Dean Hall plantation, and that they be decreed to pay their debts to the said Edmund Hyatt, his executor or executrix, or the person entitled to the same.

That the said defendants, by McCrady & Son, filed a demurrer to the same, and an answer alleging that the said representatives of the said Edmund Hyatt were proper parties thereto; that thereupon your oratrix, by her counsel in this cause, gave notice of a motion to strike out the said answer, but that by consent of counsel the said cause remained and is still on the docket, and its further progress was staid by said agreement to await the final decision in the said cause entitled Hyatt *et al. vs.* McBurney, Carson, *et al.*, which last suit, as hereinbefore stated, was, on the — day of August,
79 1886, discontinued by the plaintiffs therein, on their own motion, in order to assign the said bond of the said partners of Hyatt to Hyatt to the said C. T. Dunham, that he might bring a suit thereon and, as an alleged citizen of Massachusetts, defeat the jurisdiction of this court.

Your oratrix, in this her supplemental to her said bill, makes parties thereto the persons claimed by the defendants thereto to be proper parties, and also the said C. T. Dunham; that the said C. T. Dunham claims that he now holds the said bond and mortgage made by the partners of Hyatt to Hyatt, and has notified your oratrix of his intention to bring another suit thereon to foreclose

the said mortgage, and has filed his bill for that purpose in Berkeley county, State of South Carolina.

Your oratrix charges that all the said suits are really brought by and at the instigation and expense of the said McBurney,
80 and are brought simply to vex and harass your oratrix.

Your oratrix further shows that the said William McBurney, Alfred L. Gillespie, and William Hasseltine are perfectly solvent, and fully able to pay the debt which they owe to the representatives of Edmund Hyatt, deceased, or to the holder of the said bond given to the said Edmund Hyatt by his partners.

That the said mortgage on Dean Hall plantation, made by Hyatt's partners to Hyatt and now said to be held by C. T. Dunham, is a cloud on the title of your oratrix to Dean Hall.

I. Wherefore your oratrix prays that the said William McBurney, Thomas R. McGahan, Alfred L. Gillespie, and William Haseltine may be decreed to pay the debt which they owe to the representatives of the said Edmund Hyatt, or the holder of said bond, and thus exonerate your oratrix in the premises and
81 relieve the said Dean Hall plantation from any lien, real or pretended, on the same.

II. That all and singular the defendants in this cause may be enjoined from beginning or continuing any suit, if begun, except in this court, to enforce the alleged lien of the mortgage made by the partners of Hyatt to Hyatt, and now held by some one or more of the defendants in this suit, on the said Dean Hall plantation.

III. That all and singular the defendants in this cause, or whoever of them holds or hold the said mortgage made by Hyatt's partners to Hyatt, and alleged to be a lien on the said Dean Hall plantation, be decreed to surrender the same to the clerk of this court to be cancelled.

IV. That your oratrix may have such other and further relief as the nature of the case may demand and to your honors shall seem meet.

May it please your honors to grant unto your oratrix, not only your writ or writs of subpœna commanding each and every
82 of the said defendants to be and appear in this honorable court, full, direct, and perfect answer make to all and singular the premises (without oaths, which are hereby expressly waived), and to abide and perform all decrees of your honors in the premises, but also your writ of injunction in the premises.

And your oratrix will ever pray, etc.

A. G. MAGRATH.
H. E. YOUNG.

JAMES LOWNDES,
CLARENCE A. SEWARD,
Of Counsel.

DISTRICT OF COLUMBIA:

Personally before me came William Carson and made oath that he is the son of the complainant in the above-named suit, viz., of Caroline Carson, and well acquainted with her affairs, and more especially

with the proceedings in regard to Dean Hall plantation; that the said Caroline Carson is absent from the United States, to wit, in Sorrento, Italy; that he has read the above bill of complaint, and the same is true of his own knowledge, as derived from the records in the case and other sources of information, except the particulars of the alleged assignment of the said bond by the representatives
83 of E. Hyatt, deceased, to C. T. Dunham, and as to those he is informed, and on such information he believes the statement to be true.

WM. CARSON.

Subscribed and sworn to before me this twenty-third day of August, A. D. 1886.

[SEAL.] FRANK T. RAWLINGS,
Notary Public.

Endorsed: Filed Sept. 11th, 1886.

84 THE UNITED STATES OF AMERICA,
South Carolina District:

In the Circuit Court.

CAROLINE CARSON *vs.* WILLIAM MCBURNEY *et al.*

It appearing from the bill of complaint exhibited and verified by William Carson, the complainant being absent from the United States, that the complainant has prayed for an injunction against the defendants named in her said bill, and it also appearing that there is danger of irreparable injury to the complainant from delay to grant such injunction, and it further appearing that the facts stated in the bill are sufficient to warrant the granting of a restraining order till there can be full hearing on the motion for injunction:

Now, therefore, it is ordered that all [and] singular the defendants, to wit, Wm. McBurney, Thomas R. McGahan, Alfred L. Gillespie, Mary A. Hyatt, Mary E. Hyatt, Abraham W. Van Vechten,
85 Julia Delmonte, William Haseltine, and C. T. Dunham, and each and every of them, their attorneys and agents, be, and are hereby, temporarily restrained from beginning, or, if the same be already begun, from prosecuting further, any suits or suit whatsoever against the said Caroline Carson to foreclose any alleged mortgage on Dean Hall plantation set forth in her bill of complaint, or in any way to disturb her possession of or title to the said plantation, except in this court, and in this suit by answer, cross-bill, or otherwise, in the same as they shall be advised, till the said cause shall be fully heard in this court.

And it appearing, from the affidavit filed in the original bill in this cause, that Alfred L. Gillespie is a citizen of the State of Tennessee, and William Haseltine is a citizen of the State of California, and that it is alleged by the defendants that C. T. Dunham is a citizen of the State of Massachusetts, it is ordered that this order
86 be served on them personally, if *if* practicable, or, if not practicable, that the same be served on them by publication,

as hereinafter provided, and that service hereof be made in like manner on the defendants, Mary A. Hyatt, Mary E. Hyatt, Abraham W. Van Vechten, and Julia Delmonte, it appearing that the said defendants are each and all citizens of the State of New York.

It is further ordered that the said Alfred L. Gillespie, William Haseltine, C. T. Dunham, Mary A. Hyatt, Mary E. Hyatt, Abraham W. Van Vechten, and Julia Delmonte, if not found in the said district of South Carolina, do plead, answer, or demur to the complainant's bill of complaint on or before the 1st day of November next ensuing, and that the United States marshal of the said South Carolina district, by himself or deputy, do serve the said Alfred L. Gillespie, William Haseltine, C. T. Dunham, Mary A. Hyatt, Mary E. Hyatt, Abraham W. Van Vechten, and Julia Delmonte per-
87 sonally with a copy of this order, if their respective residences be known to him, and if the residence of any one or more of them is not known to him, then the said marshal shall publish this order once a week for six consecutive weeks in the Charleston News and Courier, a newspaper published in Charleston, South Carolina.

And, to secure the said defendants from any injury from the said temporary restraining order, the complainant, by her counsel, submitting to the same in lieu of giving a bond to secure the defendants from damages, it is hereby ordered that the said Dean Hall plantation be placed in the possession of H. E. Young and H. A. M. Smith, two of the counsel, representing opposite interests, as receivers. They will receive all rents to become due after the granting of this order and hold the same, subject to the further order of this court, and will take such steps to lease the said plantation for the year 1887 as to them shall seem advantageous to all concerned.
88 Should either of them decline to accept the office of receiver, then the other is appointed sole receiver.

September 7th, 1886.

HUGH L. BOND,
C't Judge.

Endorsed: Filed Sept. 11th, 1886.

It is admitted that the foregoing order was served as therein directed.

89 THE UNITED STATES OF AMERICA,
South Carolina District:

In the Circuit Court.

CAROLINE CARSON *vs.* WILLIAM MCBURNEY *et al.*

CHARLESTON, S. C., *Sept. 22nd*, 1886.

Hon. Hugh L. Bond, circuit judge.

DEAR SIR: I have been served by the U. S. marshal for this district with an order in the above matter made by yourself, at chambers, and appointing me as coreceiver of the property mentioned in the order. I am compelled to decline to act as such, but desire to give you my reasons, as under ordinary circumstances I should be

glad to accept such an appointment from you. My firm was employed by Mr. C. T. Dunham, a citizen of Mass. and assignee of a bond and mortgage on Dean Hall, to foreclose the same. The defendant being also a citizen of Mass., we filed proceedings in
90 the State court for that purpose (the State court being the only court with jurisdiction). The order served on me seeks to restrain our client from so doing. With the merits of that order I do not propose now in any way to deal, but simply to say that it is an order made in the cause to which neither Mr. Dunham nor any person thro' whom he claims were parties or in any way bound by the proceedings or process therein. The order defines me as representing an interest in that cause. I do not, nor do I represent any one who can be made a party thereto; and whilst the order purports to appoint receivers of the property as a security to my client, it is impossible in any way to operate as such, but, on the contrary, tends to defeat his action in the State court, already commenced, by injecting the question of jurisdiction between two courts as to whether the court whose process *in rem* first issued or that which first
91 took actual physical possession or the *res* in a cause not *in rem* has jurisdiction.

For me to accept the position of receiver or appear as such in the case would be to commit my client as a party to a cause with which he has nothing to do and treat with indifference the process of the State court, whose aid has been already solicited.

Excuse my writing so much in detail, but I presume your order was made under a misapprehension of the facts and will be corrected at the proper time, and desire to show fully why I cannot accept your appointment.

I have notified Mr. H. E. Young of my inability to act.

Yours very resp'y, HENRY A. M. SMITH.

Endorsed: Filed 22nd Sept., 1886.

92 DISTRICT OF SOUTH CAROLINA:

In the Circuit Court. In Equity.

The plea of C. T. Dunham, defendant, to the supplemental bill of complaint of Caroline Carson, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's said bill mentioned to be true in such manner and form as the same are therein and thereby set forth and alleged, doth plead thereunto, and for plea saith that this defendant (in the said supplemental bill of complaint erroneously styled a citizen of the State of South Carolina) is and was, at the time of the filing of the original and the supplemental bill of complaint herein, a citizen of the State of Massachusetts; and this defendant denies all and all manner of fraud and collusion charged in said supplemental bill of complaint, and denies that the bond and the mortgage on Dean Hall securing the same held by this defendant were fraudulently and collusively

and without consideration, at the instigation of William McBurney, assigned to this defendant in order to avoid the decree of
93 this court; and denies further that the proceedings in the State court for Berkeley county, referred to in said supplemental bill, were brought by him at the instigation of said William McBurney simply to vex and harass the complainant.

All which matters and things this defendant doth aver to be true, and pleads the same to the said supplemental bill, and humbly demands the judgment of this honorable court whether he ought to be compelled to make any further answer to the said bill of complaint, and prays to be hence dismissed with his reasonable costs and charges.

Charleston, S. C., Oct., 1886.

MITCHELL & SMITH,
Solicitors for C. T. Dunham.

We hereby certify that, in our opinion, the foregoing plea is well founded in point of law.

MITCHELL & SMITH, *Solicitors.*

UNITED STATES OF AMERICA.

DISTRICT OF MASSACHUSETTS,
County of Suffolk, City of Boston:

Personally appeared before me C. T. Dunham, defendant above named, and, being duly sworn, saith that the foregoing plea
94 is not interposed for delay, and that it is true in point of fact.

C. T. DUNHAM.

Sworn to and subscribed this first day of November, 1886, as witness my hand and official seal at said Boston.

SAMUEL JENNISON,
Notary Public and Commissioner for South Carolina.

95 UNITED STATES OF AMERICA,
District of South Carolina:

In the Circuit Court. In Equity.

The answer of C. T. Dunham to so much of the supplemental bill of complaint of Caroline Carson, complainant, as charges fraud and combination on the part of this defendant.

This defendant, reserving to himself all right of exception to the said supplemental bill of complaint, and for the fortifying of the pleas by this defendant filed to the said supplemental bill of complaint, and for an answer to so much of said bill as specially charges fraud or combination on the part of this defendant, together with his codefendants therein mentioned, saith:

That this defendant heretofore purchased, *bona fide*, for valuable consideration, the bond of William McBurney, William Hasseltine,

Alfred L. Gillespie, and Thomas R. McGahan to Edmund
96 Hyatt, bearing date 8th May, 1863, together with the mortgage securing the same, upon a certain plantation or tract of land situate in Berkeley county, in the State of South Carolina, commonly called Dean Hall, particularly described in said mortgage, and that said bond and mortgage were, by a proper and sufficient deed of assignment, under the hands and seals of Mary A. Hyatt, executrix and legatee, and Julia Delmonte, legatee, of said Edmund Hyatt, duly assigned and transferred to this defendant; that thereafter this defendant began proceedings in the court of common pleas for Berkeley county, in the said State of South Carolina (that being the only court having jurisdiction) to foreclose the said mortgage.

That thereafter this defendant has been notified by publication that subsequent to the filing of his said proceedings for foreclosure in the court of common pleas for Berkeley county the complainant herein, Caroline Carson, has filed this present supplemental
97 bill of complaint and attempted to make this defendant a party defendant thereto for the purpose of enjoining him from further prosecuting his said proceedings in the State court, altho' neither this defendant or his assigns, nor any person to whom either he or they were privy, or thro' whom either he or they claim were parties to the original bill of complaint of said Caroline Carson, nor in any [way] concerned or affected by the issues therein, or served or attempted to be served with any process whatsoever prior to the filing of said proceedings for foreclosure in the State court.

And this defendant explicitly and absolutely denies that said bond and mortgage were fraudulently and collusively and without consideration, at the instigation of Wm. McBurney, assigned to this defendant in order to avoid the decree of this court; and denies further that his said proceedings for foreclosure in the State court are brought at the instigation and expense of the said McBurney, simply to vex and harass the complainant, and, on the contrary,
98 avers that this defendant purchased said bond and mortgage "*bona fide*," for full and valuable consideration, and that his said proceedings in the State court have been commenced in good faith for the purpose of realizing upon his security.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge and belief of this defendant; all which matters and things this defendant is ready to aver, maintain, and prove as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

MITCHELL & SMITH,
Def'd'ts' Sol'rs.

99 UNITED STATES OF AMERICA.

DISTRICT OF MASSACHUSETTS,
County of Suffolk, City of Boston:

Personally appeared before me C. T. Dunham, defendant above named, and, being duly sworn, saith that so much of the foregoing answer as concern- his own acts and deeds is true, to the best of his knowledge, and that so much thereof as concerns the acts and deeds of any other persons or person therein named he believes to be true.

(Signed) C. T. DUNHAM.

Sworn and subscribed to before me this first day of November, 1886, as witness my hand and official seal at Boston.

[SEAL.] SAMUEL JENNISON,
Notary Public and Commissioner for South Carolina.

100 THE UNITED STATES OF AMERICA,
District of South Carolina:

Fourth Circuit. In Equity.

The separate answer of Mary A. Hyatt, one of the defendants, a citizen of New York, to the supplemental bill of complaint of Caroline Carson, suing as a citizen of the State of Massachusetts.

This defendant, now and at all times hereafter, saving and reserving to herself all benefits and advantages of exception to the manifold errors, uncertainties, and insufficiencies of complainant's said supplemental bill of complaint, for answer thereto, or to so much thereof as she is advised it is material or necessary for her to answer unto, answering, says that she knows nothing of the bill filed on the 11th day of August, 1866, by the complainant in this case against Alexander Robertson and others, and of the amendments thereto and proceedings thereunder mentioned in the supplemental bill to which this is an answer, save and except what appears in the records of this court, as she was no party thereto, nor was her father and testator, the late Edmund Hyatt, a party to the same.

101 This defendant admits that her father and testator, the late Edmund Hyatt, held a mortgage on the plantation, Dean Hall, the subject of foreclosure in the suit by Caroline Carson against Alexander Robertson and others above mentioned, which mortgage was made and executed by William McBurney and Alfred L. Gillespie under a power of appointment in a deed of conveyance of Elias N. Ball, the former owner of Dean Hall, to them, the said William McBurney and Alfred L. Gillespie, feof-ees, to the use of the former partnership of Hyatt, McBurney & Co., and was made and executed by the said William McBurney and Alfred L. Gillespie to secure a bond given by the said William McBurney, Alfred L. Gillespie, William Hasseltine and Thomas R. McGahan, in the penal sum of eighty thousand dollars, conditioned for the payment of forty thousand dollars, the same being given for the purchase of the in-

terest of the said Edmund Hyatt in the assets of the said firm of Hyatt, McBurney & Co.

That, as this defendant has stated above, her said father and testator was not a party to the proceedings of the said Caroline Carson to foreclose the mortgage given by the said Elias N. Ball to the executors of her husband, William A. Carson, and that, as she
102 is informed and believes and as appears from the record in the cause, the rights of her father and testator, the said Edmund Hyatt, under the said mortgage given to him by the said William McBurney and Alfred L. Gillespie were expressly saved and reserved by the decision of the Supreme Court of the United States, and it was expressly declared in the said decision that if the said Edmund Hyatt should not be made a party to the said proceedings of the said Caroline Carson, and the said Caroline Carson should be successful in her said proceedings, *that* the said Edmund Hyatt would not be affected by the decree, but that in such case he might file a new and independent bill and renew the litigation as to all the questions touching the prior mortgage which were involved in the said controversy.

That her father and testator, the said Edmund Hyatt, not having been made a party to the said proceedings, departed this life on or about the 20th September, 1876, leaving of full force and unrevoked his last will and testament, whereby he appointed this defendant executrix and his son-in-law, Joaquin Delmonte, executor of the same.

That this defendant admits that her coexecutor, Joaquin Delmonte, and herself, as executrix, together with her mother and
103 sister, as heirs-at-law of the said Edmund Hyatt, did, on or about the 15th October, 1879, file a complaint in the court of common pleas for Charleston county and State of South Carolina to foreclose the mortgage made by the said William McBurney and Alfred L. Gillespie to her father and testator as aforesaid, but she denies that they did so in order to avoid the effect of the decree of the Supreme Court of the United States; that, on the contrary, the said decree of the Supreme Court of the United States had, as she has stated above, expressly reserved the rights of her testator, the said Edmund Hyatt, and declared that he was in nowise bound or affected thereby. There was, therefore, no decree of the Supreme Court of the United States the effect of which it was to the interest of this executrix of Edmund Hyatt to avoid.

That as the case then stood, and as this defendant was then informed, the State court was the only forum open to her to prosecute the claim to foreclose the mortgage held by her testator and his rights under which had been so expressly reserved and saved by the decision of the Supreme Court, for the said Caroline Carson had sued in the United States court for South Carolina as a citi-
104 zen of the State of New York, and had constantly averred that she was a citizen of that State; and as this defendant's testator and her coexecutor and herself were likewise citizens of the State of New York, this defendant never having heard of any change of residence or citizenship on the part of Caroline Carson

Thomas R. McGahan, defendants to the original bill of complaint herein, and that no notice whatsoever was given of any motion for leave to file the supplemental bill of complaint, and that neither the said defendants nor their solicitors knew of the same until after it had been filed and the process thereon attempted to be served.

LOUIS DE B. McCRADY.

110 Sworn to and subscribed before me this first day of November, A. D. 1886. Witness my hand and official seal.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

111 *Supplemental Bill, Filed Under the Order of Court, Dated —.*

THE UNITED STATES OF AMERICA,
District of South Carolina:

CAROLINE CARSON
vs.
WILLIAM McBURNEY *et al.* } In Equity.

The order asked for in this case is to dismiss the supplemental bill which was filed with the leave of the court; but it is alleged, as cause sufficient for the order to dismiss, that there has been the omission to give due notice to the other party of the motion for leave to file the supplemental bill, as set forth in the 57th rule of court. The rule referred to relates to cases in which, for any reason, as expressed in the rule, "a supplemental, or a bill in the nature of a supplemental, may be necessary to be filed in the cause." And the reason why a notice to the adverse party may be required is that, according to the rule laid down by the Supreme Court (Shaw *v.* Bill, 95 U. S. Rep., 10), in a supplemental bill new service of subpœna is not necessary; but where there is service of subpœna, so that the parties interested are notified of the filing of the supplemental bill,

112 no necessary reason can be found why, in regard to the mere leave to file the notice, that leave is to be asked is so indispensible a prerequisite that if omitted the court is divested of all power in that case, it may be that the court, of its own motion, would direct notice to be given of the leave that was asked; but if, with all the papers before it, the court is satisfied that it is necessary for a supplemental bill to be filed, it cannot be that its power is to be suspended or made dependant on a notice to be given to the other party. If — the matter set forth in the supplemental bill and with all the papers in the case before the judge, it is proper, in his opinion, that a supplemental bill should be filed, the necessity for filing it can be only qualified by that which the court would of itself take, and which is that the other party should not be surprised and in ignorance of the filing of the supplemental bill, and, without service of subpœna informing him of it, be put to any disadvantage. The motion asking the order to set aside the filing of the supplemental bill is refused. The defendants in the supplemental bill will be allowed until the rules day in February next to plead, answer, or

demur, as they may be advised to be proper for any defence,
113 and proper notice of this extension will be given by publication to such of the defendants who are out of the State and have not appeared, and such publication shall be made by the clerk of this court publishing the notice of such extension once a week for six consecutive weeks in the Charleston News and Courier, a paper published at Charleston, South Carolina.

Dec. 7, 1886.

HUGH L. BOND,
C't Judge.

Endorsed: Filed 7th Dec., 1886.

114 Proceedings in the case of Mary A. Hyatt *vs.* McBurney and others, as stated in the case of Hyatt *vs.* Carsons, 118 U. S., p. 279.

That after the rendering of the decision in the United States Supreme Court the complainant moved to dismiss her bill, and the following order was made:

115 THE UNITED STATES OF AMERICA,
District of South Carolina:

Fourth Circuit. In Equity.

MARY A. HYATT, Ex'ix and Devisee, *et al.*
vs.
WM. MCBURNEY, CAROLINE CARSON, *et al.*

To Messrs. James Lowndes, A. G. Magrath, [and] H. E. Young, atty's for Mrs. Carson.

GENTLEMEN: Please take notice that we discontinue the above-entitled cause, and will move before his honor Judge Bond, at chambers, at Baltimore, Md., on the 8th day of July next, for leave to enter an order of discontinuance without prejudice upon the payment of the costs incurred to date, to be taxed by the clerk of this court.

July 2, 1886.

McCRADY & SON.

Endorsed: Filed July 10, 1886.

116 UNITED STATES OF AMERICA,
District of South Carolina:

Fourth Circuit. In Equity.

MARY A. HYATT, Ex'ix and Devisee, *et al.*
vs.
WM. MCBURNEY, CAROLINE CARSON, *et al.*

On motion of McCrady and Son, plaintiff's attorneys, it is ordered that upon the payment of costs incurred to date this cause does stand dismissed, and that the clerk of this court is hereby directed to enter such discontinuance upon the payment of said costs.

And it is further ordered that the clerk of this court do tax the costs in the same.

10th July, 1886.

HUGH L. BOND,
C't Judge.

117 It is admitted that all costs have been paid, and that this cause is at an end in the circuit court.

Admitted that if T. R. McGahan were present he would testify as follows:

That Edmund Hyatt, one of the firm of Hyatt, McBurney & Co., lived in New York for many years before the late war; that some time in the early or middle part of 1861 he came to Charleston on a visit, leaving his family in New York and intending to wind up his affairs and return, but that the closing up of the lines and the blockade prevented him. The bond mentioned in the complaint was given to Edmund Hyatt in part payment of his interest in the firm. He returned to New York as soon as he could, and there remained until his death.

Defendants' Evidence.

118 It is admitted that C. T. Dunham, if present, would testify that he was a citizen of the State of Massachusetts, and had always been so.

Admitted that Caroline Carson last resided in South Carolina, in the county of Charleston; that she left South Carolina early in 1861, when she went to New York, and there resided until June, 1877, when she went to Massachusetts, and there resided until September, 1877, when she went to Europe, whence she has never returned.

And, after hearing the testimony and the argument of counsel, the court made the following:

Decree.

C. T. DUNHAM, Pl'ff, *vs.* CAROLINE CARSON, Def'd't.

119 The issues arising upon the petition for removal herein and the answer thereto having been set for trial on the 20th December inst., and the same, by consent of all parties to the cause, having been heard this day:

Now, on consideration thereof, it is decreed that petitioner has failed to show that the said C. T. Dunham is not a citizen of the State of Massachusetts, and that upon the pleadings and the testimony offered in support thereof no sufficient cause for removal appears, and that the said cause be remanded to the court of common pleas for Berkeley county.

December 7th, 1886.

HUGH L. BOND,
C't. Judge.
CHARLES H. SIMONTON,
Dist. Judge.

120 *Petition for Removal.*

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the Circuit Court.

C. T. DUNHAM, Plaintiff, *against* CAROLINE CARSON, Defendant.

The court having remanded this petition to the court of common pleas for Berkeley county, and an appeal having been prayed by the defendant in open court:

It is ordered that said appeal be allowed, and that the appeal bond be fixed at two hundred and fifty dollars.

December 7th, 1886.

HUGH L. BOND,
C't Judge.
CHARLES H. SIMONTON,
Dist. Judge.

121 In the Supreme Court of the United States.

CAROLINE CARSON, Appellant, *vs.* C. T. DUNHAM, Appellee.

Now comes the appellant, Caroline Carson, by A. G. Magrath & Henry E. Young, her attorney-, and assigns for error the following matters in the order of the Court, made the 7th day of December, 1886, remanding this cause to the State court:

I. That the Court erred in holding that the burden of proving that the complainant was not a citizen of Massachusetts was upon the defendant.

II. That the Court erred in holding that no sufficient cause for removal of the said cause appears in this case.

III. That the Court erred in remanding the cause to the State court.

122 And for said errors she prays this Court to reverse the said order.

H. E. YOUNG,
A. G. MAGRATH,
Attorneys for Appellant.

C. A. SEWARD,
J. LOWNDES,
Of Counsel.

123 Know all men by these presents that I, James Lowndes, am held and firmly bound unto C. T. Dunham in the full and just sum of $250, to be paid to the said C. T. Dunham, his certain attorney, executors, administrators, or assigns; to which payment, well and truly [to be] made, I bind myself, my heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with my seal and dated this 16th day of December, anno Domini 1886.

Whereas lately in the circuit court of the United States for the

district of South Carolina, in a suit depending in the said court between C. T. Dunham and Caroline Carson, a decree was rendered against the said Caroline Carson, and the said Caroline Carson has obtained an allowance of an appeal to the Supreme Court of the United States to *reserve* the decree in the aforesaid suit, and a
124 citation directed to the said C. T. Dunham, citing and admonishing him to appear and to be in the Supreme Court of the United States on the 6th day of January, 1887:

Now, the condition of the above obligation is such that if the said Caroline Carson shall prosecute her said appeal to effect and answer all costs if she fail to make her plea good, the above obligation to be void; else to remain in full force and virtue.

JAMES LOWNDES. [L. S.]

In the presence of—
WM. L. FINLEY.

In the Circuit Court of the U. S., District of South Carolina.
November Term, 1886.

This bond approved in open court.

CHARLES A. SIMONTON,
U. S. Judge.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me James Lowndes and made oath that he possesses property, real or personal, to the value of $250 clear of all his debts.
125 Subscribed and sworn to before me this 16th day of December, A. D. 1886.

WM. L. FINLEY,
Notary Public.

126 UNITED STATES OF AMERICA,
District of South Carolina:

We hereby agree that the foregoing 116 pages constitute the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in the Supreme Court.
January 3rd, 1887.

MITCHELL & SMITH,
Att'ys for C. T. Dunham.
W. C. YOUNG,
Att'y for C. Carson.

127 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of the papers, exhibits, depositions, and other proceedings which are necessary to the hearing in the Supreme Court, as agreed upon by the counsel in the cause.
Given under my hand and seal of said court, at clerks office, in

the city of Charleston, South Carolina, this 3rd day of January, A. D. 1887.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: S. Carolina C. C. U. S. No. 1325. Caroline Carson, appellant, *vs.* C. T. Dunham. Filed January 5, 1887.

121-421

IN THE

Supreme Court of the United States.

October Term 1886.

CAROLINE CARSON, Appellant,
vs.
C. T. DUNHAM, Appellee. } No. 1325.

Statement of Facts.

This case has been advanced under the Thirty-second Rule, and the question in it is whether the case was removable from the State Court to the Circuit Court of the United States under the act of March 3d, 1875.

C. T. Dunham, on the 11th of August, 1886, filed his bill against Caroline Carson in the Court of Common Pleas of Berkely county, South Carolina, to enforce a certain bond secured by a mortgage of Dean Hall plantation.

The bond was the bond of W. McBurney, William Hasseltine, Alfred L. Gillespie, and Thomas R. McGahan to Edmund Hyatt, dated May 8, 1863, and the bond and mortgage are alleged to have been assigned by Mary A. Hyatt, executrix of Edmund Hyatt, and Julia Delmonte, to the said Dunham. (Folio 4 *et seq.*)

Service of the summons by publication was sought to be had. Such service would have been effected on October 9th, 1886. The defendant appeared on October 8th, 1886. (Folio 20.)

On October 9th, 1886, Caroline Carson filed her petition, praying that the cause be removed to the Circuit Court of

the United States for the district of South Carolina. (Folio 21 *et seq.*) The grounds of removal alleged in the petition are as follows:

I. The suit was one between citizens of different States, viz., between the complainant, a citizen of South Carolina, and the defendant, a citizen of Massachusetts; or between Mary A. Hyatt, a citizen of New York, and the defendant, a citizen of South Carolina, the said Mary A. Hyatt being the real party in interest, and an alleged assignment by her to the complainant Dunham being colorable and made to defeat the jurisdiction of the United States Court.

II. That the suit arises under the laws and Constitution of the United States in this, that the defendant claims and sets up as defenses thereto—

1st. That all the matters herein have been already adjudged in her favor by the Circuit Court of the United States for the district of South Carolina.

2d. That the complainant is barred of his present action by a judgment of the said court in her favor on the matter in controversy.

3d. That the State Court is without jurisdiction, because a prior suit on the like matter is pending in the aforesaid court of the United States, which, by its receiver, has possession of the subject-matter of this suit.

4th. That the bond and mortgage sued on are void under the laws of the United States.

The petition further alleged that the cause had not been tried, and that the first term at which it could be tried had not begun.

The defendant gave bond, as required by the act of 1875, and filed the transcript in the Circuit Court of the United States for the district of South Carolina on the 26th of October, 1886. (Folio 1.)

The defendant filed her answer in the Circuit Court on the 27th of October, 1886. (Folio 30.)

The answer contains the following allegations:

1. That the defendant, being the owner of certain bonds and a mortgage on Dean Hall, dated March 2d, 1857, securing them, impleaded in the said Circuit Court the partners of Hyatt, McBurney & Co., except Edmund Hyatt, the said firm being owners of Dean Hall; that in the said cause she obtained a decree of foreclosure, which was affirmed by this court at October Term 1878; that at the sale under the decree she became the purchaser of Dean Hall; that the said Edmund Hyatt was a partner of the said firm; that the bond now sued on, dated May 8th, 1863, was originally given to Hyatt in settlement of the partnership accounts; and that the said decree, being a decree of a court of the United States, estopped the plaintiff as privy in title to Hyatt from denying the priority of her bond and mortgage. (Folios 36, 39.)

2. That the executors of Hyatt brought suit on the said bond and mortgage against her in the State Court; that the cause was removed to the Circuit Court aforesaid, and by the decree of this court the said Circuit Court was decreed to take jurisdiction; that thereafter, and after their evidence was in, the said executors dismissed their suit, and that the said suit and the decree therein bars the plaintiff's present suit. (Folios 39, 40.)

3. That a prior suit on the same subject-matter is now pending in the Circuit Court of the United States for the district of South Carolina, and that the Circuit Court by its receiver had possession of Dean Hall. (Folio 40.)

4. That at the time of the making of the bonds and mortgage Hyatt was a citizen of New York and the obligors citizens of South Carolina, which was then in re-

bellion, and that the bond and mortgage were void under the laws of the United States. (Folio 40.)

5. That the assignment was pretensive, and made to defeat the jurisdiction of the Circuit Court. (Folio 38.)

On the 4th of November, 1886, Dunham filed a pleading which traverses the allegations of the petition. (Folio 44.) Issue was joined thereon. (Folio 46.)

On the motion of Dunham the cause was set for trial on the issues arising under the petition. On the issue whether or not Dunham was a citizen of Massachusetts, the burden of this issue was declared to be upon Caroline Carson. (Folio 47.)

On the trial the three records averred in the petition and the answer were introduced in evidence. (Folios 53, 68, 114; see also 99 U. S., 567; 118 U. S., 279.)

The following decree was made:

"The issues arising upon the petition for removal herein and the answer thereto having been set for trial on the 20th of December, inst., and the same by consent of all parties to the cause having been heard this day—

"Now, on consideration thereof, it is decreed that the said petitioner has failed to show that the said C. T. Dunham is not a citizen of Massachusetts, and, upon the pleadings and testimony offered in the support thereof, no sufficient cause for removal appears, and that the said cause be remanded to the Court of Common Pleas for Berkely county." (Folio 119.)

The present appeal was taken from this order. (Folio 120.) No motion to remand was made.

Assignment of Errors.

The appellant assigned the following errors in the decree (folio 121):

1. That the court erred in holding that the burden of

proving that the complainant was not a citizen of Massachusetts was upon the defendant.

2. That the court erred in holding that no sufficient cause for removal of the said cause appears in this case.

3. That the court erred in remanding the cause to the State Court.

Argument.

The question is whether this cause was removable on the prayer of the appellant into the Circuit Court of the United States.

The second section of the act of March 3d, 1875, (18 S. L., p. 470,) contains this provision:

"That any suit of a civil nature, at law or in equity, now pending or hereafter brought in any State Court, where the matter in dispute exceeds, exclusive of costs, the sum or value of $500, and arising under the Constitution or laws of the United States, * * * either party may remove said suit into the Circuit Court of the United States for the proper district." * * *

The contention of the appellant is that this case is one "arising under the laws of the United States" in two respects:

1. In that her rights derived from certain judgments of courts of the United States are assailed or involved in this case.

2. In that the rights of the appellee, the subject of this suit, are derived from a deed void under the laws of the United States.

The said rights of the appellant, and the said ground of invalidity in the deed of the appellee, are averred, both in the petition for removal and the answer of the appellant.

They have been properly pleaded, and the only issue is as to the sufficiency of these grounds of removal.

It is settled law that "a case arising under the laws of the United States" is removable without regard to the citizenship of the parties.

Railroad Co. *v.* Mississippi, 102 U. S., 135.
Kansas *v.* Ames, 111 U. S., 482.

The only point for discussion, therefore, is whether this case is one "arising under the laws of the United States," within the meaning of the act of March 3, 1875.

1. As to the Judgments:

Where a claim is made in a case that rights under a judgment of a United States Court are assailed, the case is "one arising under the laws of the United States."

It is not too much to say that the principle to govern this case is "*res judicata*" in this court.

In Du Passeur *v.* Rochereau, 21 Wall., 130, in which there was a writ of error to a State Court, the plaintiff in error set up in the State Court a judgment of the United States, and on the writ of error averred, as the ground of jurisdiction of this court, that the State Court had not given effect to that judgment.

This court held that it had jurisdiction of the case on that ground; that the judgment of a United States Court is a right or title under an authority exercised under the United States. The same principle is decided in—

Insurance Co. *v.* Murphy, 111 U. S., 738.
New Orleans *v.* Delamore, 114 U. S., 501.

These cases arose under the act of February 14, 1867, (14 S. L., 385,) which contains these words: "That a final judgment, * * * where any title, right, privilege, or immunity is claimed under the Constitution or any treaty

or statute of, or commission held or authority exercised under, the United States, * * * may be re-examined," &c.

The acts of February 14th, 1867, and March 3d, 1875, differ in phraseology, but are similar in legal effect.

Every civil suit is a controversy about rights, and all rights are the creation of law. The particular rights which by the act of February 14th, 1867, are made justiciable in the Supreme Court of the United States are rights created by the statutes of the United States. Now, a case which concerns a right created by the statutes of the United States arises under the law of the United States. A case arising under the laws of the United States must concern a right created by or secured by or concerning the laws of the United States.

The forms of expression are different, but their legal effect is similar. The first of these formulas is that adopted by the act of February 14th, 1867; the latter is that of the act of March 3d, 1875. The latter phraseology is the wider in its scope.

This reasoning finds sanction in Du Passeur *v.* Rochereau, where Mr. Justice Bradley, in delivering the opinion of the court, says:

"Where a State Court refuses to give effect to the judgment of a court of the United States rendered upon the points in dispute and with jurisdiction of the case and the parties, a question is undoubtedly raised which under the act of 1867 may be brought to this court for revision. The case would be one in which a title or right is claimed under an authority exercised under the United States, and the decision is against the right or title so set up. It *would then be a case arising under the laws of the United States* establishing the Circuit Court and vesting it with jurisdiction; and hence it would be within the judicial power of the United States, as defined by the Constitution, and it is clearly within the chart of appellate power given to this court in cases arising in and decided by the State Courts."

It thus appears that this court considers a case in which the effect of a judgment of a United States Court is in controversy, as "a case arising under the laws of the United States."

The same principle is asserted in a case just decided in this court, viz., The Crescent City Life-Stock Landing and Slaughter-House Company *et al. v.* The Butchers' Union Slaughter-House and Live-Stock Landing Co., in which Mr. Justice Matthews delivered the opinion of the court as follows:

* * * * * * *

"It must, therefore, be conceded that the sole question to be determined is, Did the Supreme Court of Louisiana, in deciding against the plaintiffs in error, give proper effect to the decree of the Circuit Court of the United States, subsequently reversed by this Court?

"It is argued by counsel for the defendant in error that this does not embrace any Federal question; that the effect to be given to a judgment or decree of the Circuit Court of the United States sitting in Louisiana by the courts of that State is to be determined by the law of Louisiana or by some principle of general law as to which the decision of the State Court is final; and that the ruling in question did not deprive the plaintiffs in error of 'any privilege or immunity specially set up or claimed under the Constitution or laws of the United States.'

"But this is an error. The question whether a State Court has given due effect to the judgment of a court of the United States is a question arising under the Constitution and laws of the United States, and comes within the jurisdiction of the Federal courts by proper process, although, as was said by this court in Du Passeur *v.* Rochereau, (21 Wallace, 130, 135,) 'no higher sanctity or effect can be claimed for the judgment of the Circuit Court of the United States rendered in such a case, under such circumstances, than is due to the judgments of the State Courts in a like case and under similar circumstances." (Embry *v.* Palmer, 107 U. S., 3.) It may be conceded, then, that the judgments and decrees of the Circuit Court of the United States, sitting in a particular State, in the courts of that State are to be accorded such effect, and such effect only, as would

be accorded in similar circumstances to the judgments and decrees of a State tribunal of equal authority. But it is within the jurisdiction of this court to determine in this case whether such due effect has been given by the Supreme Court of Louisiana to the decrees of the Circuit Court of the United States here drawn in question."

* * * * * * *

Two observations are suggested by this discussion:

1. There is nothing in the act of 1875 which limits the jurisdiction to rights derived from a statute law of the United States. Very few of the rights justiciable in the United States Courts have the statute laws of the United States as their source. Most of them spring from the common law. The word "arise" is very comprehensive. In Du Passeur *v.* Rochereau the right was one having its source in general jurisprudence. But inasmuch as the right had received the sanction of a judgment of a United States Court, a case concerning it was held "to arise under the laws of the United States." It is not the nature or the source of the right, but the accident of its merger into a judgment of the United States Court, which made the case concerning it one "arising under the laws of the United States."

2. The language of the act of March 3, 1875, is more comprehensive than that of February 14, 1867. The latter enumerates as grounds of jurisdiction certain specific cases which may arise under the laws of the United States, and is limited in its scope. All possible cases—both those directly and those indirectly arising under the laws of the United States—are embraced in the act of March 3, 1875.

The contention of the appellant finds further support in the decision of this court in the Pacific Railroad Removal

Cases (115 U. S., p. 1). In those cases it was held that a suit against a corporation created by the United States was "a case arising under the laws of the United States," within the meaning of the act of March 3, 1875. In these cases the right in litigation was not derived from any law of the United States, nor was any law of the United States involved in the discussion. But the right inhered in a creature of United States law, viz., a corporation of its creation; and this fact sufficed to bring the case within the act of March 3, 1875.

This case illustrates the broad construction given by this court to the phrase "arising under the laws of the United States."

Is not a case which concerns a judgment of a United States Court in a stronger sense "a case arising under the laws of the United States" than a case which arises under those laws only in the sense that it concerns a corporation created by the laws of the United States?

A case concerning a judgment of a United States Court is so much a case arising under the laws of the United States that a suit based upon it is within the Federal jurisdiction, without regard to the citizenship of the parties.

Freeman *v.* Howe, 24 How., 450.
Krippendorf *v.* Hyde, 110 U. S., 276.
Pacific Railroad Co. *v.* Missouri Pacific Railroad Co., 111 U. S., 505.

The present case is within the reason of the act of 1875. The purpose of the act was so to enlarge the jurisdiction of the United States Courts that all matters even remotely connected with the Federal jurisprudence should be cognizable by them. But nothing can be more important to the maintenance of the Federal authority than the proper enforcement of the judgments of Federal Courts. Unless they have power to see to the due enforcement of their judgments, it becomes logically possible that those judgments

will be defied or eviscerated. It is not too much to say that the paramount authority of the Federal Courts is at an end if they have not power to see to it that their mandates are obeyed. Such was evidently the view of this court in Du Passeur *v.* Rochereau, where its power, as now contended for, was explicitly asserted.

II. It is averred in the petition for removal and in the answer that the property in controversy was in the possession of the Circuit Court when the suit in the State Court was begun. This averment presents a case "arising under the laws of the United States."

The bill for foreclosure was filed in the State Court on the 11th of August, 1886, but service was not obtained, and there was no appearance until the 8th of October, 1886. The order of the Circuit Court appointing a receiver was made on September 7th, 1886.

The fact averred is a ground for removal.

People's Bank *v.* Calhoun, 102 U. S., 256.

"The rights of the parties depend upon the construction which is placed upon the act of the court in it; and the present bill is necessary in order to have a declaration of what was intended by the order and decree made in that suit, and to enforce the rights which were established by it."

"The consequence of this ruling is that in contemplation of law the property is still in the hands of the receiver of the court. If in the hands of the receiver of the Circuit Court, nothing can be plainer than that any litigation for its possession must take place in that court without regard to the citizenship of the parties."

Minnesota Co. *v.* St. Paul Co., 2 Wall., 632.

In regard to the two grounds of removal above discussed, viz., that the appellant claims the benefit of certain judgments of a United States Court, and that the property is in the hands of a United States Court, it is important to note

that the right to removal depends upon the character of the claim, and not upon its sufficiency in law. If there are judgments, as alleged, and a receivership, as alleged, the right of removal exists, although the judgments may be held not to constitute a defence and the receivership to be improper. If there is anything to consider or argue under these heads, then "a case arises," and the Circuit Court has jurisdiction. The sufficiency of the defences belongs to the consideration of the case on its merits.

III. It is further alleged as a ground for removal that the bond and mortgage having been executed during the war of the rebellion by citizens of a State in rebellion to citizens of a loyal State, are void under the laws of the United States.

This allegation presents a case directly arising under the laws of the United States. The question intended to be raised is whether this deed was void under the general rules of international law; and if not, under section 6, act of July 17, 1862, XII S. L., 591, which is in these words:

"*And be it further enacted*, That if any person within any State or Territory of the United States, other than those named as aforesaid, after the passage of this act, being engaged in armed rebellion against the Government of the United States, or aiding or abetting such rebellion, shall not, within sixty days after public warning and proclamation duly given and made by the President of the United States, cease to aid, countenance, and abet such rebellion and return to his allegiance to the United States, all the estate and property, moneys, stocks, and credits of such person shall be liable to seizure as aforesaid; and it shall be the duty of the President to seize and use them as aforesaid, or the proceeds thereof; and all sales, transfers, or conveyances of any such property, after the expiration of the said sixty days from the date of such warning and proclamation, shall be null and void; and it shall be a sufficient bar to any suit brought by such person for the

possession or use of such property, or any of it, to allege and prove that he is one of the persons described in this section."

Act July 17, 1862 (12 S. L., 591, s. 6).

The deed under which Dunham claims was executed to his predecessor in title, a loyal citizen, by citizens of South Carolina in May, 1863. This presents a case which is *prima facie* within the above-cited statute.

It is submitted that the order remanding the case should be reversed, and that the Circuit Court should be directed to take jurisdiction of it.

CLARENCE A. SEWARD,
JAMES LOWNDES,
Appellant's Attorneys.

121-1121

IN THE SUPREME COURT.

OCTOBER TERM, 1886.

No. 1325.

CAROLINE CARSON, APPELLANT,

vs.

C. T. DUNHAM, RESPONDENT.

The litigation about Dean Hall plantation, of which the present suit is a part, was begun 11th August, 1866.

The facts on which Mrs. Carson, then a citizen of New York, based her complaint, are thus given by the supreme court, in *99 U. S., p. 568*, viz : 1

"Wm. Carson, of South Carolina, died in August, 1856, leaving a widow, Caroline, and two minor sons, William and James. He left considerable personal property, and a plantation known as Dean Hall. By his will he appointed Robertson & Blacklock his executors, and directed all his estate to be sold on such terms as they should deem proper. The proceeds, after the payment of his debts, were to be divided into three parts, to be held in trust by his executors. The 2
interest of one-third was to be paid to the widow. The interest of the other two-thirds was to be devoted to the education and support of the two sons until they should become of age. The principal was then to be paid over to them.

"The executors sold Dean Hall to Elias N. Ball, and took his bonds and mortgage for a part of the purchase money. In 1863, Ball sold the property to Hyatt, McBurney & Co., a firm consisting of HYATT, McBurney, Gillespie, Hazletine and McGahan. The conveyance was made to Gillespie and McBurney. The firm paid for the property in Confederate 3
treasury notes. Out of the proceeds Ball paid his bonds to

Robertson, and took them up and discharged the mortgage. Blacklock, the other executor, was then absent from the country, and upon his return refused to recognize the transaction. Hyatt sold his interest in the plantation to the other members of the firm, and Gillespie and McBurney gave him a lien upon it to secure the payment of the purchase money. * * *

4 "As the sons of the testator came of age they transferred their entire interest in the estate of their father to their mother. She filed the bill to set aside the cancellation of the mortgage upon Dean Hall as fraudulent and void. * * *

"The executors sold the property to Ball in the spring of 1857 for $50,000. He paid $15,000 down, and gave his bonds for the balance, secured by a mortgage upon the premises, as before stated.

"The property was valuable and the amount due was well secured. The debt was payable only in lawful money of the
5 United States, and the executors had no right to take anything in payment but such money or its equivalent. Such was the condition of things in the spring of the year 1863.

"The civil war was then flagrant in South Carolina. McBurney says, that having a large quantity of cotton on hand, and the city being blockaded, his firm 'were willing to change some of their investments into real estate until peace should be restored.' This was shrewd and wise. The sole currency then was Confederate money. The Dean Hall property lay invitingly before them, but was incumbered by a heavy mort-
6 gage for the benefit of the widow and the orphans. The plan was conceived of acquiring this title and getting rid of the mortgage, both by means of Confederate currency. They thus executed it: They gave Ball $100,000 in Confederate notes for the property, and took a conveyance from him. They placed a part of the Confederate money in his hands, as McBurney says, 'to enable him to pay off his bonds to said executors and to satisfy said mortgage.' Robertson received payment in this paper and therefore gave up the bonds, and as soon as he could get access to the record entered satisfac-
7 tion of the mortgage. He invested the notes in Confederate bonds, which became utterly worthless at the close of the war."

After going to the supreme court in 1873 (*19 Wall, 94–107*), and being then remanded for want of parties, it resulted in the circuit court, on the 10th May, 1878, in the decree set out on pp. 20–21 of present transcript.

This decree fixes:

(1). That the bonds of Elias N. Ball to Robertson & Blacklock, secured by the purchase money-mortgage of Dean Hall 8
plantation, are "valid, unsatisfied and subsisting securities," held by Mrs. Carson, and that the mortgage securing the payment thereof is "a valid, unsatisfied and subsisting mortgage."

(2). That the satisfaction entered thereon by Robertson "is null and void."

(3). That the sum due thereon is $31,000, with interest from 28th April, 1863.

(4). That the parties in interest have leave till 1st August, 1878, to pay this debt, and if not paid on that day, the 9
"equity of redemption of all parties to this suit AND of Hyatt McBurney & Co. also, in the said Dean Hall plantation be forever barred and forclosed, and that the marshal of this court do sell the said plantation," &c.

(5). That after paying the expenses of the said sale, he apply the proceeds to the satisfaction, in the first place, of Mrs. Carson's debt, the surplus, if any, to be held subject to the order of the court. If necessary to give Mrs. Carson bonds of the purchaser for the payment of her debt, these bonds were to be secured by a first lien on the property. 10
Leave was given to her to buy, and if so, her debt was to be set off against the purchase money.

Hyatt, who then was and in fact always has been a citizen of New York, was not a party to these proceedings. Only his late partners, as citizens of South Carolina, were made such. After the decree of the supreme court, affirming the U. S. circuit court decree just set forth, his representatives brought suit in the state court to foreclose the mortgage given to him by his late partners.

Mrs. Carson petitioned for removal to the U. S. court, but 11

this was refused by both courts, and the case went to a final hearing in the state court.

Its decree on substantially the same case is a curious contrast to that of this court, viz :

	UNITED STATES COURT.	STATE COURT.
12	It was a fraud to pay a gold debt with Confederate treasury notes and to satisfy the mortgage on such a payment.	There is not a shadow of fraud either in the circumstances attending the said satisfaction or the nature of the payments.
13	The satisfaction entered by Robertson on Ball's bond held by the trustees of Carson and on the mortgage securing it, is a nullity, and the bond is due and the mortgage is a valid first lien on Dean Hall.	The satisfaction by Robertson on Ball's bond is good satisfaction and the mortgage to Hyatt by his partners, McBurney & Co., is the first lien on Dean Hall.
	Hyatt has, as a second mortgagee, but an equity of redemption, and it is barred.	Hyatt has a first mortgage on the property. He is entitled to the proceeds of sale ahead of all other claims.
14	That Dean Hall be sold and the proceeds applied to the payment first of the Ball bond held by Mrs. Carson, and secondly to the debt to Hyatt. *99 U. S., 568.*	That Dean Hall be sold and the proceeds applied to the payment of the debt due by Hyatt's late partners to Hyatt. *18th So. Co., 199*

Mrs. Carson took this case to the supreme court on writ of error, and this court decreed that Mrs. Carson was a citi-
15 zen of Massachusetts and was entitled to the removal of the case on the ground of citizenship, and remanded it to the

U. S. circuit court for South Carolina District, with the mandate "to take jurisdiction and proceed to a final determination of the matter in controversy."

The *resumé* of the case in this decree is so clear and terse that we are tempted to quote it at the risk of repetition. We ask special reference to it.

Upon this mandate being filed in the circuit court, Hyatt's counsel moved for leave "to discontinue the cause *without* 16
prejudice." *Tr., p. 39, 115.*

By his order, filed 10th July, 1886, Judge Bond ordered that, on payment of costs to date, "this cause stand *dismissed*." *Tr., p. 39, 116.*

This order, as printed, does not show the matter as strongly as it really is; for in the original order, as faithfully copied in the transcript, the words "without prejudice," after "dismissed," stand with the pen drawn through them, showing they were carefully erased by Judge Bond.

However, the inference is sufficient. Hyatt's counsel give 17
notice of a motion for an order to "discontinue without prejudice."

And Judge Bond orders the case to "stand dismissed," and that without the limitation asked for.

On 11th August following, Dunham, the present plaintiff, in the State court, alleging himself to be a citizen of Massachusetts, turns up as the alleged owner of the bond, and files a new bill in the state court to foreclose this very same mortgage given by Hyatt's partners to Hyatt, which had been in 18
litigation for twenty-one years, and which, on the 10th May, 1878, by the circuit court, and subsequently by this court, had been adjudged to be a second mortgage to Mrs. Carson's.

Mrs. Carson, in the proper time, and complying with every requisition of the law, filed her petition for removal to the U. S. circuit court, alleging two grounds for such removal:

1st. That it is a suit of a civil nature, arising under the constitution and laws of the United States, in that the defendant claims and sets up as defences thereto (*Tr.*, p. 8).

(*a*). That the matters and things involved in this suit have 19

been already adjudged in her favor by the U. S. circuit court for the district of South Carolina.

(*b*). That the complainant is barred of his present suit by a judgment of the said court in her favor on the matter in controversy.

(*c*). That the state court is without jurisdiction, because a prior suit on the same subject is pending in the said court of
20 the United States, which, by its receiver, has possession of the subject matter of the suit.

(*d*). That the bond and mortgage sued on are void, under the laws of the United States (p. 8, f. 22), because (p. 15, f. 40), when such bond was executed to the said E. Hyatt, he was a citizen of the loyal State of New York, and the obligors were citizens of the State of South Carolina, then in rebellion against the United States.

2. That this is a controversy wholly between citizens of different States, and that the transfer of the bond by the
21 Hyatts is collusive and pretensive, and simply to defeat the jurisdiction of the United States court.

The circuit court held that on Mrs. Carson lay the burden of proof; that Dunham was not a citizen of Massachusetts, and that there appeared no sufficient cause for removal, and remanded the cause to the state court.

ASSIGNMENT OF ERRORS.

22 That the court erred:

1. In holding that the burden of proving that Dunham was not a citizen of Massachusetts was upon Mrs. Carson.

2. In holding that no sufficient cause for removal of the said cause appears in this case.

3. In remanding the cause to the state court.

And prays this court to reverse said order.

ARGUMENT.

23 The question is substantially whether or not this is a suit arising under the constitution or the laws of the United

States. That it is a civil suit and above the statutory value there is no dispute.

Act 1875, Gen'l Stat. U. S,, p. 470 and supp.

Mrs. Carson claims that it is such a suit, because there are five federal questions involved, as given above.

24

What then is a case arising under the constitution and laws of the United States?

The question is thus answered by this court through Marshall, C. J., in *Cohen v. Virginia, 6 Wheat., 379.*

There it was contended that cases arising under the constitution and laws of the United States were such as either, 1st, must grow out of those provisions which are capable of self-execution, as, for instance, under § 2 of Art 4 (citizens entitled to privileges in different states), or Sec. 10 of Art 1 25
(the treaty clause).

Or " must be a right *given* by some act which becomes necessary to execute the powers given in the constitution, of which the laws of naturalization are an example.

The court rejected this construction as too narrow, and held that a case * * " may be said to arise under the constitution or a law of the United States whenever its correct decision depends on the construction of either."

Again, in *Osborn v. U. S. Bank., 9 Wheat., 821, 822,* the 26
court upheld its jurisdiction in cases brought by the bank, a corporation created by the United States with the right to sue in the United States courts.

" If (says Marshall, C. J.) it be a sufficient foundation for jurisdiction that the title or right set up by the party may be defeated by one construction of the constitution or laws of the United States and sustained by the opposite construction, provided the facts necessary to support the action be made out; then all the other questions must be decided as incidental to this, which gives that jurisdiction. Those other 27
questions cannot arrest the proceedings."

In *Ableman v. Booth, 21 How., 506*, a United States commissioner had committed Booth for an offense against a law of the United States. A judge of the supreme court of Wisconsin, on *habeas corpus*, discharged Booth. The *habeas corpus* was brought on two grounds: 1st, That the act of congress under which Booth was arrested was unconstitutional and void; and, 2nd, that the offense was not properly
28 described in the warrant.

The supreme court held that these were federal questions, and could be decided only by a U. S. court.

Opinion by Taney, C. J.

Freeman v. Howe, 24 How., 450–483. Nelson, A. J. Freeman, U. S. marshal, had possession of certain property under an attachment issued in the U. S. circuit court The state's sheriff took the property in replevin suit brought by Howe. The marshal pleaded the authority of the U. S. circuit court.
29 Overruled by the state court. The supreme court set aside the decision of the state court, though the defendants in error (Howe & Co.) claimed that the attachment was "against the property of the railroad company, and conferred no authority upon the marshal to take the property of the plaintiff in the replevin suit" (p. 457). "But," says the court, "this involves a question of right and title to the property under the federal process, and which it belongs to the federal, not to the state courts to determine."

30 *Cooper v. Mayor, 6 Wall., 248.* Cooper sued the mayor and aldermen of Memphis for trespasses upon real estate. They filed a petition for removal under the act of congress of 1863 and 1866, alleging that the acts complained of, if done, were done by them under the authority and for the benefit of the United States. That they had been appointed mayor and aldermen under the authority of the president of the United States, by the then military governor of Tennessee, Andrew Johnson.

The cause having been removed to the circuit court, it
31 dismissed the suit for want of jurisdiction, as the petitioners had "*failed to show that they are entitled to have the cause removed.*"

The supreme court reversed this

Curia.

"It is the right and duty of the national government to have its constitution and laws interpreted and applied by its own judicial tribunals. In cases arising under them and properly brought before it, this court is the final arbiter. *The decisions of the courts of the United States*, within their sphere of action, *are as conclusive as the laws of congress, made in* 32
pursuance of the constitution.

"This is essential to the peace of the nation and to the vigor and efficiency of the government. A different principle would lead to the most mischievous consequences. The courts of the several states might determine the same question in different ways. There would be no uniformity of decisions. For every act of an officer, civil or military, of the United States, including alike the highest and the lowest, done under their authority, he would be liable to harassing litigation in the state courts." * * * * * * * 33

* * * "The validity of the defence authorized to be made is a distinct subject. It involves wholly different inquiries. We have not had occasion to consider it. It has no connexion whatever with the question of jurisdiction."

In *Murdock v. Memphis, 20 Wall., 590*, a very clear definition is given, although not *ex professo* of cases arising under the constitution and laws of the U. S. as those where *rights depend on the federal laws or their construction.*

34

Matthewes v. McStea, 20 Wall., 646.

Where the very question involved in our case came up.

Drafts were drawn by ——— on the firm of Matthewes, Brandon & Chambliss. Matthewes lived in New York, the others, Brandon and Chambliss, in New Orleans. The drafts were accepted in N. O. McStea got the drafts and brought suit in N. Y. Matthewes defended on the ground that the war dissolved the partnership before the drafts were accepted. One draft was accepted before the president's proclamation of 16th August, 1861 (prohibiting intercourse—*12 Stat., 257*, 35
§ 15 *Appendix*) and the others afterwards.

The court of N. Y. held the later drafts void, the first valid, and Matthewes took the case to the supreme court.

On a motion to dismiss because no federal question was involved as to the first draft, the court held otherwise, and refused the motion on the ground that the question involved was the sufficiency of the acts of the president to inaugurate a war which would render invalid this contract.

36 *The Prize case, 2 Black, 635.*
The Protector, 12 Wall., 700.
U. S. v. Lane, 8 Wall., 185.

And this though the court on the hearing on the merits, affirmed the decision of the New York court.

Matthewes v. McStea, 91 U. S., 7.

In the *Pacific Removal Cases, 115 U. S., 1*, it was held that
37 the fact of a corporation holding a charter from the U. S., gives it the right to remove suits brought against it in the state court, on the ground that such are suits arising under the laws of the U. S. (*p. 11*).

The charter bestows all the faculties on the bank, and it can "bring no suit which is not authorized by a law of the U. S. All its actions and all its rights are dependent on the same law." Hence any case it has is one arising under the laws of the U. S.

Waite, C. J., and Miller, A. J., dissented, but only on the
38 ground that congress did not intend to give the words, "arising under the constitution and laws of the U. S.," in the act of 1875, the broad meaning "above given," though the power of congress to do so was not doubted (*p. 24.*)

So also in *Southern Pacific R. Co. v. California, 118 U. S., p. 112*, it was held to be a federal question whether the State of California could tax a railroad company deriving its rights from a charter granted by the U. S.

See R. R. v. Mississippi, 102 U. S., 135, 141.
39 *Ames v. Kansas, 111 U. S., 449.*
Starin v. New York, 115 U. S., 248, 257.

In *Palmer v. Hussey*, decided 18th Nov., 1886, 7 Supreme Ct., Rep. 158, 119 U. S., p. 96, Hussey had been discharged in bankruptcy. Palmer sued him in the state court for the value of bonds alleged to have been held by him in a fiduciary capacity. Hussey pleaded his discharge in bankruptcy.

On writ of error to the supreme court, a motion was made to dismiss it because there was no federal question involved.

Curia. 40

The motion to dismiss is denied.

Palmer, in his affidavit, which in this case takes the place of technical pleading, specially set up and claimed an immunity, under section 5117 of the Revised Statutes, from the operation of the discharge in bankruptcy because of the fraudulent and fiduciary character of his debt, and the decision was against him. This gives us jurisdiction, since the exemption depends on the construction and effect of Sec. 5117, which provides that no debt created by the fraud . . . . .
of the bankrupt, or . . . . while acting in any fiduciary 41
character, shall be discharged by proceedings in bankruptcy. As the affidavit of Hussey set forth the date of the adjudication in bankruptcy and the date of discharge, the question of delay in making an application and the construction and effect of section 5108 may also, perhaps, have been raised on the record. The opinion of the court of appeals shows that both of these questions were actually presented to and decided by that court. *87 N. Y., 303.*"

42

Now, what Mrs. Carson claims is

PROPOSITION I.

That under the non-intercourse act of the U. S. of 1861 (13 July), and the president's proclamation of 16th August, 1861, the bond and mortgage given by Hyatt's partners to Hyatt to close the firm of Hyatt, McBurney Co., as a commercial transaction between a loyal citizen of the U. S. and a rebel is void, and that this is a defense to the suit for the 43
foreclosure of the mortgage.

And as said in *Cooper v. Mayor, 6 Wall., 248*, the validity of this defense at this stage of the proceedings is of no moment. It is a "distinct subject," and "involves wholly different inquiries." *Supra, p. 8*

In *Ker v. Illinois*, decided at this term of this court, it says:

"But the main proposition insisted on by counsel for plaintiff in error in this court is that, by virtue of the treaty
44 of extradition with Peru, the defendant acquired by his residence in that country a right of asylum,—a right to be free from molestation for the crime committed in Illinois, a positive right in him that he should only be forcibly removed from Peru to the state of Illinois in accordance with the provisions of the treaty,—and that this right is one which he can assert in the courts of the United States in all cases, whether the removal took place under proceedings sanctioned by the treaty, or under proceedings which were in total disregard of that treaty, amounting to an unlawful and unauthorized kid-
45 napping. This view of the subject is presented in various forms, and repeated in various shapes, in the argument of counsel. The fact that this question was raised in the supreme court of Illinois may be said to confer jurisdiction on this court, because, in making this claim, the defendant asserted a right under a treaty of the United States, and, whether the assertion was well founded or not, this court has jurisdiction to decide it; and we proceed to inquire into it."

"Commercial intercourse between the inhabitants of terri-
46 tory in insurrection and those of territory not in insurrection, except under the license of the president, and according to the regulations prescribed by the secretary of the treasury, was entirely prohibited. PROHIBITION WAS THE RULE, AND LICENSE THE EXCEPTION." This under the act of 1861 and the proclamation of 1863.

The Ouachita Cotton, 6 Wall., 521.

"The payment of money by a subject of one of the belligerent States in the country of another is condemned, and
47 all contracts and securities looking to that end are illegal and void, p. 557. * * *

"In the case of *Brown vs. The United States*, Mr. Justice Story said that no principle was better settled than that all contracts made with an enemy during the war were utterly void, p. 557; * * * * nor can there be any waiver of this illegality and its voidance.

"The defence is allowed, not for the sake of the defendant, but of the law itself, the principle is indispensable to the purity of its administration. It will not enforce what it has 48
forbidden and denounced. The maxim (is): *ex dolo malo non oritur actio.*" * * * Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the cause. No consent of the defendant can neutralize its effect. A stipulation in the most solemn form to waive the objection would be tainted with the vice of the original contract, and void for the same reason."

Coppell v. Hall, 7 Wall., 542.

The principle is carried through many cases—*e.g., U. S. v.* 49
Grosmayer, 9 Wall., 586.

Where even transactions through an agent in the Confederate States was held illegal, and the Northerner who there bought cotton was held to have no title to it.

Cf. McKee v. U. S., 8 Wall., 163.

U. S. v. Lane, 8 Wall., 185.

Scholifield v. Eichelberger, 7 Pet., 592, is worth special consideration. Scholifield & Co., British subjects, were ordered 50
by Eichelberger, during the war (1812), to buy goods for him. They did so, and the goods were sent to Eichelberger *after* the war. He refused to pay for them. S. & Co. had paid for them, and brought suit. The correspondence between Eichelberger and S. & Co. had been carried on by "cartel ship," and inspected by the agent of the United States, appointed for the purpose.

Defence—Contracts made during the war are void (p. 592).

Curia—"The doctrine is not at this day to be questioned, that during a state of hostility the citizens of the hostile State 51
are *incapable* of contracting with each other" (p. 593). * * * *

To the objection that these goods were sent after the war, and that, therefore, the plaintiff's claim was good.

Curia—"The consideration, fatal to the claim of the plaintiff, is that the letter on which these advances were made was in itself a nullity, and could not be made the basis of a contract on which this court could entertain a suit. The purchases made under it could add nothing to its validity,"
52 (p. 595).

To the same effect is *The Reform, 3 Wall., 629.* This vessel started on a voyage from Baltimore to a port in Virginia, then held by the confederates. She was seized, but not tried till after the war. Owners contended that commercial intercourse being now no longer illegal, no condemnation could now take place.

Sed Curia, p. 629. "Respondents are correct in supposing that a forfeiture incurred under a penal statute, temporary in
53 its terms, can not be enforced after the statute has expired, and that the repeal of a penal statute has the same effect, unless the repealing law contains a repealing clause as to pending prosecutions. Many authorities were cited in support of these propositions, but it does not seem to be necessary to give them examination, as the propositions are elementary and undeniable. Granting all this, however, still it is quite evident that the motions can not prevail, because the act of congress, under consideration, was not a temporary act, as assumed by the respondents, nor has it ever been repealed.
54 On the contrary, it is a general law, without any limitation as to its duration, and is still in force for the recovery of penalties, or for the enforcement of forfeiture, incurred during the insurrection and before the termination of hostilities. Restrictions upon commercial intercourse were limited to the period of the continuance of hostilities, but there was no limitation as to the duration of the act of congress. Cessation of hostilities restored the right of commercial intercourse, but the restoration of such intercourse could not have the effect to repeal the act of congress, which suspended such inter-
55 course during the continuance of hostilities, or to exonerate a vessel or cargo from a forfeiture incurred for a violation of

the restrictions while they were in full operation. Motion to dismiss the appeal is therefore overruled."

Montgomery v. U. S., 15 Wall., 399, 400, is especially strong, as in this case it was a foreigner dealing with the agent of the rebel, the agent a loyal citizen, also living in loyal territory; who suffered.

Montgomery, a British subject, bought of Burbidge, a 56
loyal person (both living in New Orleans after its capture by the U. S. troops) the crop of Johnson, a rebel in the confederate lines.

The crop was brought to New Orleans by the federal troops.

The contract," whether executed or executory," was "illegal and void." . . . "It is vain to contend that any right can be acquired under such a contract."

"It is true the sale was negotiated by agents of Johnson living outside of the enemy's territory, but it was not the less 57
his act. . . Nothing is clearer than that all commercial transactions of whatever nature (except ransom contracts), *with* the subjects or in *the territory* of the enemy, whether *direct* or *indirect*, as through an *agent* or partner who is neutral, are illegal and void."

U. S. v. Lapene, 17 Wall., 601.

While New Orleans was held by the confederates, Lapene sent an agent into the adjacent parishes to buy cotton.

While the agent was on this mission, New Orleans fell. 58

The agent returned in July, 1862. But the cotton remained in the parishes till they also fell into the hands of the federals, and the cotton was brought by the U. S. army to New Orleans.

Held, that this was trading with the enemy, and the cotton was forfeited.

See also

Mitchell v. U. S., 21 Wall., 350.

Maddox v. U.S., 15 Wall., 58. 59

Matthews v. McStea, 91 U. S., 7, fixes that the prohibition of intercourse began 16th August, 1861.

And the war closed 2nd August, 1866.

U. S. v. Anderson, 9 Wall., 71.
McKee v. Rains, 10 Wall., 25.
Walker v. U. S.. 106 U. S., 413.
14 Stat. 1866, appendix 111.

60

The bond to Hyatt is dated 8th May, 1863.

PROPOSITION II.

Mrs. Carson further claims that the decree of Judge Bond, in *Carson v. Robertson*, filed 10th May, 1878 (affirmed, *99 U. S., 107*), barred the equity of redemption, not only of all "the parties to this suit, but also that of Hyatt, McBurney & Co." That Hyatt and all parties claiming under him (Dunham &c.) are barred from setting up the mortgage on Dean Hall, given by Hyatt's partners to Hyatt as a superior lien to Mrs. Carson's for the purchase money. The court in that decree fixed that the mortgage held by Mrs. Carson for the purchase money was a prior lien to that held by Hyatt from his partners. Mrs. Carson bought under this decree. If her mortgage was superior to Hyatt's, then her title, derived under her mortgage, ranks higher than Hyatt's mortgage.

61

62

We do not deny that, as Hyatt was not a party in Carson v. Robertson, he can litigate all these questions *de novo*; but then he must litigate them with regard to this decree; upon the effect to be given to it depend his rights. At no previous time in this contest could the question have been made properly. Now it can be made only in this court, if a right is claimed under this decree by either of the parties to this suit.

63

Mrs Carson goes further and claims that not only the case of *Carson and Robertson* but also the case of *Hyatt v. Carson*, recently passed on by this supreme court, prevents all litigation in regard to the mortgage on "Dean Hall" except in the U. S. courts.

64

This makes this a federal question, as much as if it was a particular statute of the U. S. upon the construction of which her rights depended.

"When a state court refuses to give effect to a judgment of a court of the United States, * * * a question is undoubtedly raised, which, under the act of 1867, may be brought to this court for revision. The case would be one in which a *right or a title is claimed* under an authority exercised under the United States. * * * It would be thus a *case arising* under the laws of the United States, establishing the 65
circuit court and vesting it with jurisdiction."

Rochereau v. DuPasseur, 21 Wall., 134.
Insurance Co. v. Murphy, 111 U. S., 738.
New Orleans R. R. Co., v. Delamore, 114 U. S., 501.

"The question whether a state court has given due effect to the judgment of a court of the United States is a question arising under the constitution and laws of the United States, and comes within the jurisdiction of the federal courts by proper process, although, as was said by this court in *Du-* 66
Passeur v. Rochereau, 21 Wall., 130, 135, "no higher sanctity or effect can be claimed for the judgment of the circuit court of the United States rendered in such a case, under such circumstances, than is due to the judgments of the State courts in a like case and under similar circumstances." *Embry v. Palmer, 107, U. S., 3.*

"It may be conceded, then, that the judgments and decrees of the circuit court of the United States, sitting in a particular state, in the courts of that state, are to be accorded such effect, and such effect only, as would be accorded in similar 67
circumstances to the judgments and decrees of a state tri-

bunal of equal authority. But it is within the jurisdiction of this court to determine in this case whether such due effect has been given by the supreme court of Louisiana, to the decrees or the circuit court of the United States, here drawn in question."

Crescent City Life Stock Co. v. H. Bolthers Co., MS., Oct. Term, Nov. 11, 1867. No. 119 U. S.

68

PROPOSITION III.

Again, Mrs. Carson claims, as a ground of removal, that the property, Dean Hall plantation, is in the hands of a receiver, and therefore can not be interfered with by the state court and this

69 1. Whether or not the receiver was appointed before the state court acquired jurisdiction or not—but,

2. The receiver was appointed by the U. S. court before the State court acquired jurisdiction, even admitting that the case of Dunham v. Carson is entirely independent of the previous cases.

The summons in Dunham v. Carson was filed 11th August, 1886.

The order of publication was obtained on the 26th August, 1886.

70 The publication begun on the 28th August, 1886, and was up 9th October, 1886. Mrs. Carson appeared on the 8th October, 1886.

The order of court putting Dean Hall into the hands of a receiver was filed 11th day of September, 1886.

The following extracts from the code of South Carolina gives the law as to the time when the state court first obtained jurisdiction:

"Section 120. An action is commenced as to each defend-
71 ant when the summons is served on him, or on a co-defendant who is a joint contractor or otherwise united in interest

with him. An attempt to commence an action is deemed equivalent to the commencement thereof, within the meaning of this title, when the summons is delivered with the intent that it shall be *actually* served to the sheriff or other officer of the county in which the defendants or one of them usually or last resided.

"Section 158. In the cases mentioned in Section 156 (that of a non-resident defendant), the service of the summons shall 72
be deemed complete at the expiration of the time prescribed by the order of publication." In this case, 9th October, 1887.

"Section 160. From the time of the service of the summons in a civil action, or the allowance of a provisional remedy, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings."

Section 156 is too long to cite in full. It prescribes that in case of absent defendants they shall be served by getting an order of publication, then publishing the order at least once a week for six weeks in a paper most apt to give notice 73
to the defendants, &c.

Mrs. Carson never lived in Berkeley County after the sale of Dean Hall, in 1856.

She left the south (Charleston County) in 1861, and has never resided there since.

Though Dunham's counsel gave copies of the summons to the sheriffs of both Charleston and Berkeley Counties, it is impossible that he did this with the intent that the summons should be *actually* served on Mrs. Carson. 74

It was a mental impossibility to have such an intent. The sheriff can't go beyond his bailiwick.

But this section never has been applied to non-residents, and it was clearly never intended by the legislature to be so applied.

Until then the publication was complete—or until, in this case, Mrs. Carson, by her counsel, appeared on the 8th Oct., 1886, the day she filed her petition for removal, the state court did not have jurisdiction of this case.

As said, the receiver was appointed by circuit court of 75
the U. S. on the 11th day of September, 1886.

"The property," says this court, "having been seized under the process of attachment and in the custody of the marshal, and the right to hold it being a question belonging to the federal court, under whose process it was seized, to determine, there was no authority, as we have seen, under the process of the state court to interfere with it. We agree with Mr. Justice Grier, in *Peck et al. v. Jenness et al.*, 7 *How.*,
76 *624–5*: 'It is a doctrine of law too long established to require citation of authorities, that where a court has jurisdiction, it has a right to decide every question which occurs in the cause; and whether its decision be correct or otherwise, its judgment, till reversed, is regarded as binding in every court; and that where the jurisdiction of a court and the right of a plaintiff to prosecute his suit in it have once attached, that right cannot be arrested or taken away by proceedings in another court.' Neither can one take the property from the custody of the other by replevin or any
77 other process; for this would produce a conflict exceedingly embarrassing to the administration of justice."

Freeman v. Howe, *24 How.*, *453*.

People's Bank v. Calhoun, *102 U. S.*, *256*: Calhoun filed a bill in the U. S. circuit court, in 1874, against the railroad, to foreclose a mortgage on the same, and by this court the property was put in the hands of a receiver. In 1876 the People's Bank attached a part of the property.

This attachment case was removed to the U. S. circuit
78 court by consent.

The court (*p. 261*) held that the case could not be removed by consent, but that the facts (the receivership) made out a proper case for removal under the statute.

Thus, when the property was in the hands of a receiver appointed by the U. S. court, it was held proper "that the case should be decided by its tribunals, to avoid the conflict which might have arisen if the cases had proceeded to final judgment in courts of different jurisdictions.

"We think this was not only permissible, but that it was
79 the proper course to pursue in such case. The jurisdiction of the circuit court of the United States does not here de-

pend on the citizenship of the parties, but on the subject matter of the litigation. That was *in the actual possession* of that court when the State court attempted to levy its writ of attachment on the property. It was for the court having such possession to determine how far it would permit any other court to interfere with that possession, and what effect it would give to the attempt of another court to seize the property so under its control. * * * * The 80
latter (circuit) court had not only obtained jurisdiction of the question of lien prior to initiation of the bank's suit, but had taken possession of the property by its receiver. It had thus drawn to itself the subject matter of the litigation and the right to decide upon the conflicting claims to the possession and control of the road. These principles are not new to this court; they will be found to be sustained by

Minnesota Co. v. St. Paul Co., 2 Wall., 609.
Watson v. Jones, 13 Wall., 679.
Buck v. Colbath, 3 Wall., 334. 81
Freeman v. Howe, 24 How., 450.

"In consenting, therefore, to the voluntary removal of the litigation from the state into the federal court, the parties did no more than what they would have been *compelled to do by the injunction of the latter*, and what would have been done by such compulsory order if they had not submitted to it by agreement. We do not think that there was error in the court entertaining jurisdiction of the plea of interpleader of Calhoun and Opdyke. *Wiswall v. Samson*, *14 How.*, *52*."

82

The circuit court, in our case, had not only appointed its receiver and put the property, Dean Hall, in his possession, but it had gone further and enjoined Dunham and all others claiming under the mortgage made to Hyatt from prosecuting their claim except in the suit then pending in its court.

Heidretter v. Elizabeth Oilcloth Co., 112 U. S., 294, goes yet further, in so far as the suit in the state court, though begun subsequently to the attachment in the U. S. court (seizure for improper use as a distillery), was based on a mechanic's lien 83
antedating such seizure. Under judgment in the state court

the property was sold, and the purchaser brought ejectment in the state court against the purchaser under the sale made by the U. S. court under the seizure.

The suit was removed into the U. S. circuit court as one arising under the constitution and laws of the U. S.

The supreme court referring to and affirming *Wiswall v. Samson, 14 How., 52*, says "that (*p. 203*) was a controversy
84 as to the title to real estate, one party claiming under a sale upon execution, issued on judgments rendered in the circuit court of the United States, the property being at the time of this sale in the possession of a receiver of a state court, under whose subsequent decree and sale the defendant claimed title. It is a significant fact, in that case, that, at the time of the appointment of the receiver by the state court, the executions upon the judgments had been issued and levied, and were a subsisting lien upon the premises. It was said in that case by Mr. Justice Nelson, delivering the opinion of the
85 court: 'It has been argued that a sale of the premises on execution and purchase, occasioned no interference with the possession of the receiver, and hence no contempt of the authority of the court, and that the sale therefore in such a case should be upheld. But conceding the proceedings did not disturb the possession of the receiver, the argument does not meet the objection. The property is a fund in court to abide the event of the litigation, and to be applied to the payment of the judgment creditor, who has filed his bill to remove impediments in the way of his execution. If he has
86 succeeded in establishing his right to the application of any portion of the fund, it is the duty of the court to see that the application is made. And in order to effect this, the court must administer it independently of any rights acquired by third persons, pending the litigation. Otherwise the whole fund may have passed out of its hands before the final decree and the litigation become fruitless. And the conclusion was: It is sufficient to say that the sale under the judgment pending the equity suit, and while the court was in possession of the estate, without the leave of the court, was illegal and
87 void And the same conclusion must prevail here, for although the sale under the judgments in the state court was

not made until after the property had passed from the possession of the district court, by delivery to the purchaser at the sale under the decree, yet the initial step on which the sheriff's sale depended—the commencement of the proceedings to enforce the mechanics' lien, asserting the jurisdiction and control of the state court over the property sold—took place when that property was in the exclusive control and custody of the district court: and by reason of its prosecu- 88
tion to a sale, was an invasion of the jurisdiction of that court. * * * * * * * * * *The substantial violation of the jurisdiction of the district court consisted in the control over the property in its possession, assumed and asserted in commencing the proceedings, to enforce against it the lien claimed by the plaintiffs in those actions, prosecuting them to judgment and consummating them by a sale.* The principle applied in *Wiswall v. Sampson, ubi supra,* must be regarded as firmly established in the decisions of this court.

"It has often been approved and affirmed. 89

Peale v. Phipps, 14 How., 368.
Hagan v. Lucas, 10 Pet., 450.
Williams v. Benedict, 8 How., 107.
Pulliam v. Osborne, 17 How, 471.
Taylor v. Carryl, 20 How., 583.
Yonley v. Lavender, 21 Wall., 276.
People's Bank v. Calhoun, 102 U. S., 256.
Barton v. Barbour, 104 U. S., 126.
Covell v. Heyman, 111 U. S., 176.

"That rule has no reference to the supremacy of one 90
tribunal over another, nor to the superiority in rank of the respective claims, in behalf of which the conflicting jurisdictions are involved. It simply requires, as a matter of necessity and therefore of comity, that when the object of the action requires the control and dominion of the property involved in the litigation, that court which first acquires possession, or that dominion which is equivalent, draws to itself the exclusive right to dispose of it for the purposes of its jurisdiction. It was in accordance with this principle that in *Pullman v. Osborne,* 17 How., 471, this court confirmed the 91
legal title of land to a purchaser under an execution upon a

judgment rendered in a state court, because first actually levied as against one claiming under an execution out of the district court of the United States, which had a priority of lien by reason of having been first issued."

92

PROPOSITION IV.

Again, Mrs. Carson claims that the fact that the title now assailed by the mortgage to Hyatt is held by her under the decree of the U. S. circuit court in *Carson v. Robertson*, affirmed by the supreme court of the U. S. On its construction depends whether it is superior to Hyatt's mortgage or not. This also makes it a federal question.

93 *DuPasseur v. Rochereau*, *21 Wall.*, *130*, already cited, decides this directly. The very question in that case was that the simple fact that the one party held a title from the U. S. marshal, the rank of which in regard to another title, was assailed, presented a federal question. The quotation from the case we have given, *supra*, *p.* and we shall not repeat it here.

Factor v. Murphy, *111 U. S.*, *739*, decides the same question, and holds that the U. S. court had jurisdiction. "It is apparent that the only controversy in this case relates
94 to the effect to be given to the sale under the order of the district court of the U. S. to sell the mortgaged property free from incumbrance." This is a federal question, and the writ of error lies.

To the same effect is *New Orleans v. Delamare*, *114 U. S.*, *505*. The same question, the effect of a title derived from the U. S. district court, was involved with the same result.
95 *Factor v. Murphy* was fully confirmed.

It will be answered to the majority of the above cases that they apply to writs of error, and that the federal question does not arise till it is seen whether or not the state court will decide against the validity of the claim made under the U. S. law. 96

This is true to a certain extent, but it is true only because the statute giving the writ of error fixes that this shall not lie till the state court has decided against the validity of the claim made under the authority of the United States. This of necessity, with a writ of error, for it only lies to correct the errors in a decree.

But in the removal act the United States have left out this clause entirely, and for removal it is enough that there is a federal question. And this, equally of necessity; for the removal must be asked for before the first trial term and before the trial. So there can, of course, be no decision of the state court against the right claimed under the United States. 97

Again. I suppose it will be objected to the claim of Mrs. Carson, that the decree in *Hyatt v. Carson* ends all litigation on the matters involved in the present suit, except in this court; that there has been no decree in the cause on the merits, but only on the question of removal. The decree of the supreme court, however is carefully worded, and orders the circuit court "to take jurisdiction and proceed to a *final* determination of the *matter in controversy*." 98

The Hyatts shortly after moved for leave to discontinue, "without prejudice." The circuit court granted the leave to discontinue, but struck out the words "without prejudice."

Is not the construction of these two decrees, necessary to decide whether or not Mrs. Carson's contention is right? that the suit of *Hyatt v. Carson* bars all further litigation in this matter, except in the United States circuit court for South Carolina district. 99

Mrs. Carson has thus presented fully the grounds on which
100 she claims that federal questions are involved in this case, and does so with confidence of the validity of her claims.

Still it is enough if ONE of her claims is valid.

"Nor is it any objection that questions are introduced that are not all of a federal character. If *one* of the latter exists, if there be a *single* such ingredient in the mass it is sufficient." That element is decisive upon the subject of jurisdiction. *Cooper v. May or 6 Wall., 252.*

101 In the argument below it was claimed, and doubtless will be claimed here, that, in the case of *Carson v. McBurney*, (Supplemental Bill), the receiver was appointed improperly. How, was not very clearly stated; but it was apparently because a rule of court was not followed literally. But even were this so, it matters not at this stage of the proceedings. His appointment cannot be attacked collaterally.

"In considering the grounds on which it is sought to repel the bar of the decree," says this court, "we must disregard at once all that do not attack the jurisdiction of the
102 court over the cause or the parties. It cannot be assailed *collaterally for mere* error.

"It follows, therefore, that we cannot notice the allegation that appellants were minor defendents, for whom a general guardian only, and not a guardian *ad litem*, appeared to defend."

Colt v. Colt, 111 U. S., 567.

And if a decree can not be attacked collaterally on the ground that minors were not properly before the court, much
103 less can it be attacked because a rule of court, confessedly subject to the control of the court, was not observed.

TO SUM UP BRIEFLY WHAT WE HAVE SAID.

The question before the court is really, whether a direction from the supreme court to the circuit court, to proceed "to the final determination of a case," can be in any manner avoided by any order of the circuit court, which does not tend to and effect the "final determination of that case?" Or, in other words, can any order of the circuit court be made 104
consistently with the direction of the supreme court, which tends to divest the circuit court of its jurisdiction, and transfers to a state court the power to adjudicate in a case, whereof the final determination has been committed to the circuit court of the United States?

In the case of Hyatt v. Carson, the case was brought in the state court. On the application to transfer to the U. S. court, it was refused. An appeal was taken to this court, and the refusal reversed. Thereupon this court proceeded to consider the case on its merits, and did direct the circuit 105
to proceed to a final determination of the case. The plaintiffs in that case, whom we will designate under the general name of Hyatt, moved, before Judge Bond, to dismiss their bill. And Judge Bond, it must be presumed, supposing that this motion for leave to dismiss the bill and pay the costs was, in effect, that "final determination of the case," which this court had directed the circuit court to accomplish, granted the order. And thereupon, C. T. Dunham, as the assignee of Hyatt, commenced again, in the State court, proceedings to enforce in his name, as assignee of Hyatt, the 106
same questions affecting the right of Caroline Carson, which this court had decided did not affect her rights; and directed the circuit court to proceed to the "final determination" of the case, in which the question of her right was involved.

Caroline Carson was the daughter of James L. Petigru, a name of recognized distinction in the legal profession, and the wife of William A. Carson, in his day, a planter of large means.

At his death, by his will, and the transfers of the several 107
interests of her two sons, Caroline Carson became entitled to

the whole beneficial owner of the property, the subject of this controversy, the legal estate in which was in two trustees.

Caroline Carson, not being in sympathy with her native state in its secession, or the war which followed, removed her domicil to the city of New York, and there resided to the end of, and after the termination of the war.

While absent, one of the parties named as executors and
108 trustees, the other absent and not concurring, sold and professed to convey to Hyatt, McBurney & Company, a partnership in the city of Charleston, an absolute estate in fee simple of this plantation, called Dean Hall; receiving in payment for the same a certain amount of Confederate treasury notes.

At the close then of the war, so far as the action of this one of the trustees could affect her, Caroline Carson had been deprived of her property, and a valuable estate was represented in the transfer of her right, by that which was not only valueless, but which was denied the quality of having
109 value, because in violation of the Constitution of the United States.

In 1866, Caroline Carson filed her bill in the circuit court of the United States for the District of South Carolina, against the several parties, who could be found, constituting the copartnership of Hyatt, McBurney & Company. But Hyatt the copartner, was a citizen of New York, of which state Caroline Carson was then also a citizen. And he (Hyatt) claimed, or it was claimed for him, that in the settlement of the copartnership of Hyatt, McBurney & Co., he had re-
110 ceived from that copartnership, as part of his share of its assetts, a mortgage of Dean Hall.

The claim being in effect that, although at one time, and before its dissolution, one of the copartners of Hyatt, McBurney & Company, and so, with the other partners the joint owners, upon that dissolution by the act and assent of the other partners, he became the mortgagee of the whole interest of the other partners, to the extent of the amount which the mortgage professed to secure.

Under this bill, filed in 1866, the litigation commenced
111 against William McBurney and all the other partners of Hyatt, McBurney & Company, who could be made subject

to the jurisdiction of the circuit court of the United States in the district of South Carolina.

After the most tedious and exhausting litigations, Hyatt, McBurney & Company, being in possession of Dean Hall, this court decided that the transfer from Alexander Robertson, the executor and trustee, who had professed to transfer the absolute estate in Dean Hall to Hyatt, McBurney & Co., was invalid, and did not give them title to the property. 112

It would ordinarily have been considered that if the decision of the highest court in the United States was that a defendant, one or more, had no title to the property, which he claimed as having an absolute right in fee; but that the title so claimed was absolute in another; that the title which he, as defendant, was adjudged not to be his, would, by necessary consequence, involve this proposition, that what he had no right in himself to claim; he had no right which he could transfer to another. And if the copartnership of Hyatt, McBurney & Company were not the owners of Dean Hall, that 113 Hyatt, McBurney & Company had no more right to give to another an estate, by way of mortgage, than by an absolute deed. Nor was the claim of such mortgagee made stronger, but in fact if anything could make it weaker than it was, it would be in the fact that this mortgagee was one of those whose claim originally was that of a joint interest as owner, in the property of which he now claimed as mortgagee; and the title under which, to him and others, he claims now as mortgagee, this court decided was invalid. And that nothing more was to be done than to Caroline Carson in possession, 114 and the peaceable enjoyment of what was hers.

But Hyatt himself having died, his representatives then commenced proceedings in the state court against Caroline Carson, joining with her as defendants his other copartners, to foreclose the mortgage, so as before stated, given to him in the settlement of his interest in the copartnership of Hyatt, McBurney & Company; and for this end instituted proceedings in the state court. The application for removal was refused; the state courts proceeded to adjudge the case, and made its decision virtually reversing the decision of this court. 115 In behalf of Caroline Carson an appeal was taken to this

court. And after hearing the case, this court reversed the decision of the State court; directed the case to be transferred to the circuit court of the United States, and further directing this court to proceed to "a final determination of the case."

Thereupon, subsequently, in behalf of the representatives of Hyatt, an application is made in chambers before Judge
116 Bond for leave to dismiss the bill in behalf of the Hyatts, on payment of costs, and without prejudice;" and the order was granted, striking out the words, "without prejudice."

On that order, as soon as granted, C. T. Dunham, under an assignment, as claimed from the representatives of Hyatt commences anew proceedings in the state court against Caroline Carson and others: the object of these proceedings being to renew the litigation concerning the right of Hyatt, McBurney & Company to claim to have acquired, by their pretended purchase from one executor and trustee under the
117 will of William A. Carson, and for Confederate treasury notes, good and sufficient title to Dean Hall. And by affirming their right, as such purchasers, to give validity to the mortgage claimed as executed by them to Hyatt, and by the assignment from these representatives of Hyatt to C. T. Dunham, to give, by the assignment to Dunham by these representatives of Hyatt, a right which Hyatt himself did not acquire by the mortgage to him from Hyatt, McBurney & Co.; because Hyatt, McBurney & Co. did not, by the conveyance from the executor and trustee under the will of
118 William A. Carson to Hyatt, McBurney & Co., for Confederate treasury notes, any right, title or interest in Dean Hall.

And so in 1887, by this protracted and exhaustive litigation, seeking to obtain in the State court a decision adverse to that made in this court, on the merits of the rights of those through whom C. T. Dunham claims; and that the assignee of a mortgagee has rights against the owner of land, which this court has decided that neither the mortgagee nor the mortgagor could maintain against the owner of the land so claimed by the assignee as bound by lien of his assignor.

119 Caroline Carson has asked that this last proceeding against her, and so oppressive in its effects, should be removed from

the state court and taken to the circuit court of the United States, that, as required by the supreme court of the United States, it should be there finally determined, as it must have been if leave had not been granted to dismiss the bill—leave which I am sure would not have been given if it had been supposed that the effect would not have been "a final determination of the case, but to renew a litigation which had lasted more than twenty years, and which would lead to this most unhappy result: that the "*finis litium*" so much to be desired, could be indefinitely postponed in the courts of the United States, by anticipating a final decision of the question at issue by dismissing the bill and paying the costs; and then, under a new name, in other tribunals, renewing the same litigation, *toties quoties*, to the exhaustion of the suitor, whose case the highest court had sent down to be "finally determined."

A G. MAGRATH.
H. E. YOUNG.

February 23d, 1887.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 1325.

CAROLINE CARSON, APPELLANT,

vs.

C. T. DUNHAM, APPELLEE.

STATEMENT OF FACTS.

The Circuit Court for the District of South Carolina decreed that this cause, which had been removed from the State Court, should be remanded, and the cause comes up on an appeal from the Decree remanding.

The statement of facts, prefixed to the brief of argument submitted by counsel for appellant, begins by stating that the litigation concerning Dean Hall begun in August, 1866. It is well at the outset, therefore, to correct this by an as emphatic a declaration that this cause is NOT connected with that litigation, but an entirely independent proceeding, as an inspection of the brief will show.

In 1863, Wm. McBurney, Wm. Haseltine, A. L. Gillespie and T. R. McGahan executed their bond to Edmund Hyatt, their bond for $40,000, and to secure it gave a mortgage of a certain plantation in Charleston (now Berkeley) County, State of South Carolina, called Dean Hall.

In August, 1866, Caroline Carson filed a bill against (among others) Wm. McBurney, Wm. Haseltine, A. L. Gillespie and T. R. McGahan, the holders of the legal title to Dean Hall, praying a sale, etc. To this proceeding Edmund

Hyatt was *not a party*. After a long course this cause was finally decided by this Court in its decree reported in *McBurney vs. Carson*, 99 U. S., 567. In their earlier decisions on the question of parties (reported 19 Wall, 94), this Court says (p. 106):

"If he (Hyatt) shall not be made a party, and the com-
"plainant shall be successful, his rights will not be affected
4 "by the decree. In such case he can file a new and inde-
"pendent bill, and renew the litigation as to all the ques-
"tions touching the prior mortgage which are involved in
"this controversy. The complainant has the option to make
"him a party or to proceed without him, and take the haz-
"ard of the consequences."

And referring to this in their last decision, in 1878, (99 U. S., 567) they say:

"This Court held that Hyatt was not an indispensable
"party, as the decree would not affect his rights."

5 Notwithstanding this declaration that any sale made in the cause would be subject to Hyatt's rights to renew the litigation, the counsel for Mrs. Carson had the place sold and bought in under the sale and took a deed from the Marshal. The costs were paid, and the case has been entirely and long since finally ended. (Brief p. 20, fo. 53.)

This case being entirely at an end, Mary A. Hyatt, the executrix of Edmund Hyatt, (in pursuance of the express right reserved to her by the decree of this Court) in 1879 filed proceedings in the proper State Court in South Caro-
6 lina to foreclose the bond and mortgage given to Edmund Hyatt making Caroline Carson as holder of the legal title under the Marshal's deed a party. Caroline Carson thereupon filed a petition to remove the cause into the United States Circuit Court on the ground of citizenship. But the removal was denied both by the State and the United States Circuit Courts, and the State Court proceeded to a final determination of the cause. Caroline Carson appealed first to the State Supreme Court, and from thence to this Court on the ground that the State Court had erred in not
7 granting her petition for removal at the inception of the suit. The decree of this Court (reported in *Carson v. Hyatt*,

118 U. S., 279) reversed the decree of the State Supreme Court on the ground only that it should have granted the petition for removal, and that all the proceedings in the State Court subsequent to the filing of the petition were nullities. The decree of this Court, therefore, simply left the matter where it was when the petition for removal was filed, viz: a bill of complaint and answer in the United States Circuit Court, but no evidence taken nor any hearing or 8
decree upon the merits had. Thereupon Mary A. Hyatt moved to discontinue her bill, and her motion was granted. (Brief pp. 39–40, ff. 116–117.)

The Circuit Judge granted the motion to discontinue on payment of costs. And the costs were duly taxed and paid to, and received by, the counsel for Caroline Carson without objection or appeal, and the case is finally ended. (Brief, p. 40, fol. 117.)

The bill having been discontinued on her own motion, before hearing on the merits, Mary A. Hyatt stood with all 9
her rights unaffected in any way.

Thereafter she assigned the bond to C. T. Dunham, a citizen of Massachusetts, for full and valuable consideration. (Brief, ff. 98 and 105.)

Dunham filed his proceedings for foreclosure of the mortgage securing the bond in the proper State Court of the State of South Carolina and placed summons in proper form for service on the defendant, Caroline Carson, in the hands of the Sheriff of Berkeley County, wherein the property is situate, and in the hands of the Sheriff of 10
Charleston County, in which County she last resided. Both Sheriffs returned *non est inventus* as to the Defendant Caroline Carson, and thereupon counsel for Dunham applied for and received the customary order for publication of an absent defendant in cases of foreclosure, and duly published the same.

The day before the expiration of the time for answering, Caroline Carson filed an appearance in the State Court with a bond and petition for removal. She filed no answer in the State Court nor did her counsel ever apply for or receive 11
any order in the State Court removing the cause. After the

cause was removed she filed an answer in the United States Circuit Court.

Dunham filed a traverse and plea to the petition for removal; and the issues arising upon the petition for removal and the traverse and plea thereto were set for trial and heard by the Circuit Court, and on the hearing these issues were adjudicated in favor of Dunham, and the
12 case was remanded.

The proceedings in the State Court up to the filing of the petition for removal are found in the Brief, pp. 1–11, fols. 1–30.

The answer of Caroline Carson filed in the United States Circuit Court pp. 11–16, fols. 30–42.

The traverse and plea to the petition for removal. pp. 16–17, fols. 43–46.

The evidence on behalf of the petitioner pp. 18–40, fols. 49–117.

13 The evidence on behalf of the traversor, p. 30, fol. 118.

The decree of Court remanding the cause p. 40, fol. 118.

ARGUMENT.

The right of the petitioner for a removal depends upon the case as made by the petition and the record in the State Court; *i. e.*, the record in the *State Court*, including the petition for removal, must show the right, for otherwise the State Court is not bound to let go its jurisdiction. No new matter subsequently set up or appearing in the United
14 States Circuit Court is at all competent or admissible, for the action of the State Court can be controlled only by what is properly made to appear to it.

Germania Insurance Co. v. State of Wisconsin, 119 U. S., (filed 13 Dec., 1886.)
7 Sup. Ct. Reporter, p. 260.
Dillon Rem. Cau., 3d Ed., Sec. 82.

The petition (Brief, p. 7–8, fols. 21–23,) is filed under the Act of 1875 and sets out two grounds for removal—
15 1. That the cause sought to be removed is one arising under the Constitution and laws of the United States.

2. That the controversy is between citizens of different States.

The reasons alleged as sustaining the first ground are five in number—

1. That all the matters in the suit sought to be removed have been already adjudged in favor of the petitioner by the Circuit Court of the United States for the District of South Carolina. 16

2. That the complainant is barred of his present action by a judgment of the said Circuit Court in favor of the petitioner on the matter in controversy.

3. That this Court is without jurisdiction because a prior suit on the like matter is pending in the aforesaid Court of the United States, which by its receiver, has possession of the subject matter of this suit.

4. That the bond and mortgage sued on are void under the laws of the United States.

5. That the petitioner holds title to Dean Hall plantation 17 under a conveyance from the United States Marshal for the district of South Carolina.

We propose to take up these five points *seriatim* and see if either of them, upon the evidence adduced, comes within the meaning of a cause "arising under the Constitution and laws of the United States" within the purview of the Act of 1875 providing for the removal of such causes.

1.

That all the matters in the cause sought to be removed have been 18 *already adjudged in the petitioner's favor by the Circuit Court of the United States for the District of South Carolina..*

To substantiate this the petitioner put in evidence the judgment roll in McBurney vs. Carson, and claims (appellant's brief of argument, p. 16, proposition II,) that the decree of this Court (99 U. S. 567) has the effect of barring Hyatt and his assigns from proceeding in any Court save the United States Circuit Court for South Carolina. This, in the face of the fact that it is admitted that Hyatt was not 19 a party to the cause, and that as adjudicated by this Court

in 19 Wall, 94, and again confirmed in 99 U. S., 567, Hyatt was free to enforce his rights by any proceedings he saw fit, and the complainant in that cause, Mrs. Carson, proceeded at her peril.

But the counsel take the position that the State Court will refuse to give effect to the judgment of this Court in that cause. There are two false assumptions here:

20 1. That this Court is at liberty to infer in advance that the State Court will disobey the Constitutional mandate to give full force and effect to the judgment of the Circuit Court of the United States.

2. That a "Federal question" within the appellate jurisdiction of this Court is necessarily also a question arising under the *laws* of the United States within the removal jurisdiction of the Circuit Court.

We do not deny, but on the contrary admit, that if hereafter the Court shall not give full force and effect to any
21 judgment of the United States Court, a writ of error will lie from this Court to review the decision of the State Supreme Court. But we do deny that the United States Circuit Court has the right, in advance, to assume that the State Courts will so act, and deprive them on that assumption, at the inception, of their lawful jurisdiction. To illustrate:

This Court has decided that the holder of negotiable paper, pledged as collateral before maturity, to secure an antecedent debt, does not hold subject to any equities. *R.*
22 *R. Co. vs. National Bank*, 102 U. S., 14. The Court of Appeals of New York has decided exactly the reverse. *Stalker vs McDonald*, 6 Hill, (N. Y.) 93. Yet it would not be held that the decision of that principle give it the effect of a Statute of Congress, and made every case arising within its scope a case arising under the laws of the United States, so that the United States Circuit Courts for New York could remove all such cases from the State Courts on that ground alone.

Again, suppose a judgment recovered by a citizen of South
23 Carolina against another citizen of South Carolina in the State Courts of South Carolina, and thereafter suit is brought

on that judgment against the same defendant in the State Court of New York; could this suit, at its inception, be removed to the United States Court for New York, on the allegation that the State Courts of New York would thereafter refuse to give force to the South Carolina judgment? Manifestly not. The federal question would not arise until the State Courts of New York had refused to give effect to the judgment of the sister State, and then an appeal would 24
lie to this Court from the final Court of Appeals of New York. The same rule must apply to a judgment recovered in an United States Circuit Court, for it has been decided that the Constitution of the United States gives exactly the same effect to both.

Embry vs. Palmer, 107 U. S., 3.
DuPasseur vs. Rochereau, 21 Wall, 130.
Crescent City Life Stock Co. vs. Bolthen, (filed 11 Nov. 1886,) 119 U. S. p. —.
7 Sup. Ct. Rep: p. 472. 25

Caroline Carson claims that this judgment operates as a bar in her favor; but she stands in no better position than if she herself were suing upon a judgment recovered in the United States Court, and it has been decided that the fact that the judgment sued on was recovered in a Court of the United States is no ground for a removal under the Act of 1875.

Provident Sav. Society vs. Ford, 114 U. S. 635.

26

The only question is, was Dunham or his assignor a party to the proceeding? If so the judgment is a bar; otherwise not.

Gibbes vs. Crandall, 119 U.S., p. —, (filed 29 Jan., 1887. 7 Sup. Ct. Reporter, 497.

2.

That the complainant is barred of his present action by a judgment of the said Court in petitioner's favor on the matters in 27
controversy.

The basis for this proposition is that the order for the discontinuance of the case of *Hyatt vs. Carson*, before evidence taken, or hearing on the merits, was in effect a judgment in favor of Mrs. Carson against Hyatt, and therefore binds his assignee, Dunham.

Here again the petitioner confounds two things, viz: matters of *defence* and matters of *removal*. If that judgment is a
28 *bar*, then all that is necessary is to plead it in bar in the State Courts, and if those Courts refuse to give it proper force and effect, an appeal will eventually lie to this Court from the State Supreme Court to correct its erroneous actions in that regard.

For the simple fact that the right claimed or set up depends upon the force and effect of a judgment recovered in the United States Courts, is no ground for a removal.

Provident Sav. Soc. vs. Ford, 114 U. S., 638.

29 Although if the State Courts refuse to give it due and proper force and effect, an appeal will ultimately lie to this Court.

Embry vs. Palmer, 107 U. S., 3.

But as we have just shown it is not a ground for removing a case in its inception to assume that the State Courts will decide in contravention of all rules of law. If it were indeed so, that in every case where any right was asserted or claimed, based upon some prior record or judgment of an
30 United States Court or upon the authority of some principle of law enunciated by this Court; a controversy arose under the laws of the United States triable in and removable to the United States Circuit Courts; the effect would be literally to strip the State Courts of their jurisdiction, and to whelm the Federal Courts under the mass; for at this period of time an incalculable amount of property rests at some link in the chain of title upon the decree of an United States Court, or the deed of its Marshal, and the principles of law enunciated by this Court, cover the whole field of jurisprudence.

31 But, as matter of law, has this order for discontinuance the effect of a bar as against Hyatt and his assigns?

It is an order for discontinuance made on a bill, and answer before evidence taken and before hearing on the merits.

It has been repeatedly held that the dismissal of a bill in equity for any cause before a hearing on the merits does not constitute a bar to a second suit.

Mitford Pl., 237.
Brandlyn v. Ord, 1 At., 571. 32
Maddox Ch. Vol. 2, p. 313.
Walden v. Bradley, 14 Pet., 156.
Hughes v. United States, 4 Wall., 232.
Smith v. McNeal, 109 U. S., 426.

And the whole doctrine is elaborately and fully stated and discussed by the late Mr. Justice Clifford, in *Badger v. Badger*, 1 Clifford, 237.

The intention of the Circuit Judge, in making the order without inserting the words "without prejudice," is twice 33
misstated in appellant's Brief of Argument, p. 5, fol. 17, and p. 25, fol. 98.

The Circuit Judge, under the case of *Stevens v. Railroad, 4 Fed. Rep., 97*, determined to decide nothing in advance, but to let the order have such effect as was given to it by the rules of law—to operate as a bar if it was one, and not to have that effect if, by law, it should not. In other words, he made the order neither with, nor without prejudice, but with such effect as, by the rules of practice, it should have, and such was his expressed intention and understanding. 34

In *Stevens v. Railroads*, 4 Fed. Rep., 97, the presiding Judge, after saying that the insertion of the words either "with" or "without" prejudice was improper, as prejudging the case, on a motion to dismiss before a hearing on the merits, cites with approbation the decision of the Court in *Vanneman v. Fairbrother*, 7 Blackford, 547, viz:

"Had the order of dismission contained the words 'with-
"'out prejudice,' as desired by complainant, it would have
"afforded no more security to his rights than it would with-
"out them; and the insertion of the words 'with preju- 35
"dice,' as insisted on by the Court, does not render the order

" of dismission peremptory, like a decree of dismission on " the merits. Either set of words is unmeaning in an order " of dismissal on the motion of complainant, without a final " hearing, as it would have been had the cause been dis- " missed on motion of the defendants for want of prosecu- " tion."

36

3.

That the State Court was without jurisdiction because a prior suit on the like matter was pending in the aforesaid Circuit Court of the United States, which, by its Receiver, had possession of the subject matter of the suit.

To maintain the removal on this ground, in face of the facts of the case, would be to place a premium upon un-
37 seemly haste, and encourage a race between Courts of concurrent jurisdiction to seize the *res* irrespective of the controversy and defeat each other's jurisdiction.

The facts are:

In October, 1880, Caroline Carson filed an original bill in the Circuit Court of the United States for South Carolina against William McBurney, Thomas R. McGahan, Alfred L. Gillespie and William Hasseltine. (Brief, p. 21–22, fols. 58–63.)

Hyatt nor any person claiming through him was even men-
38 *tioned as a party.*

The bill prays only personal relief against the defendants, viz.: It prays that a decree for the payment of money be made against them on an alleged claim of subrogation.

Only McBurney and McGahan were served, and they appeared and filed a demurrer to the bill (Brief, p. 23, fols. 64–66,) in November, 1880. This demurrer was never set down for argument nor argued, and the bill stood dismissed as of course after the next succeeding rules day. (*Equity Rules, 33.*)

39 Six years later, on 11th August, 1886, C. T. Dunham filed in the State Court his complaint for foreclosure and a re-

ceiver against Caroline Carson and his notice of Pendency of Action.

On the same day he placed the summons in the hands of the Sheriff of Berkeley County, wherein the property was situate, and of Charleston County, wherein Caroline Carson last resided, for service. On 21st and 33d August the respective Sheriffs returned *non est inventus* as to Caroline Carson. On 26th August the proper affidavit was filed and an order for service of the process by publication was made, and on the same day the summons was deposited in the mail for service, and publication was actually begun on 28th August.

The provisions of the Code of Civil Procedure of South Carolina are as follows:

SECTION 120. An action is commenced as to each defendant when the summons is served on him, or on a co-defendant, who is a joint contractor, or otherwise united in interest with him. *An attempt to commence an action is deemed equivalent to the commencement thereof, within the meaning of this title, when the summons is delivered with the intent that it shall be actually served, to the Sheriff or other officer of the County in which the defendants, or one of them, usually or last resided;* or, if a corporation be defendant, to the Sheriff or other officer of the County in which such corporation was established by law, or where its general business was transacted or where it kept an office for the transaction of business.

SECTION 148. Civil actions in the Courts of Record of this State shall be *commenced* by service of a summons.

SECTION 153. In an action affecting the title to real property, the plaintiff, at the time of filing the complaint, or at any time afterwards, or whenever a warrant of attachment, under Chapter 4 of Title 7, Part 2, of this Code of Procedure, shall be issued, or at any time afterwards, the plaintiff, or a defendant, when he sets up an affirmative cause of action in his answer, and demands substantive relief, at the time of filing his answer, or at any time afterwards, if the same be intended to affect real estate, may file with the Clerk of each County in which the property is situated, a notice of the pendency of the action, containing the names of parties, the object of the action and the description of the property in that County affected thereby; and if the action be for the foreclosure of a mortgage, such notice must be filed twenty days before judgment and must contain the date of the mortgage, the parties thereto and the time and place of recording the same. From the time of filing only shall the pendency of action be constructive notice to a purchaser or encumbrancer of the property affected thereby; and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encum-

brancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action. For the purposes of this Section an action shall be deemed to be pending from the time of filing such notice: *Provided, however,* That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or an order therefor, or by the personal service thereof on a defendant within sixty days after such filing. And the Court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued or abated, as
44 is provided in Section 142, on application of any person aggrieved or on good cause shown, and on such notice as shall be directed or approved by the Court, order the notice authorized by this Section to be cancelled of record by the Clerk of any County in whose office the same may have been filed or recorded; and such cancellation shall be made by an endorsement to that effect on the margin of the record, which shall refer to the order, and for which the Clerk shall be entitled to a fee of twenty-five cents.

SECTION 156. Where the person on whom the service of the summons is to be made cannot, after due diligence, be found within the State, and that fact appears by affidavit to the satisfaction of the Court or a Judge thereof, the Clerk of the Court of Common Pleas, Master, or the Probate
45 Judge of the county where the trial is to be had, and it in like manner appears that a cause of action exists against the defendant in respect to whom the service is to be made, or that he is a proper party to an action relating to real property in this State, such Court, Judge, Clerk, Master, or Judge of Probate, may grant an order that the service be made by publication of the summons in either of the following cases: 1. Where the defendant is a foreign corporation, has property within the State, or the cause of action arose therein. 2. Where the defendant, being a resident of this State, has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with like intent. 3. Where he is not a resident of this State, but has property therein, and the Court has jurisdic-
46 of the subject of the action. 4. Where the subject of the action is real or personal property in this State, and the defendant has or claims a lien or interest actual or contingent therein, or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein. The order shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made as most likely to give notice to the person to be served, and for such length of time as may be deemed reasonable, not less than once a week for six weeks. In case of publication, the Court, Judge, Clerk, Master, or Judge of Probate, shall also direct a copy of the summons to be forthwith deposited in the postoffice, directed to the person to be served at his place of residence. unless it appear that such residence is neither known to the party making the application nor can
47 with reasonable diligence be ascertained by him. Where publication is ordered, personal service of the summons out of the State is equivalent

to publication and deposit in the postoffice. In case of minors in like cases, a similar order shall be made, and like proceeding be had, as in the case of adults. In case of persons imprisoned in the penitentiary, or in the jail of any county in the State, and in case of lunatics confined in the asylum, or in any other place of confinement, personal service of the summons and complaint, or any other process affecting the rights of such persons, shall be made by the Sheriff of the county in which such persons shall be imprisoned or confined, with the like proof of service as required in the case of minors; and thereupon the Judge of the Court or Trial Justice before whom the action is to be tried shall 48
appoint some attorney or other responsible person to act as guardian *ad litem* for any person so imprisoned or confined, who shall receive out of the property of such persons a reasonable compensation for services rendered in their behalf; and the case shall proceed as in other cases of persons not under disabilities: *Provided*, That in cases of persons imprisoned or confined as herein stated outside of this State, service by publication shall be deemed sufficient. The defendant against whom publication is ordered, or his representatives, on application and sufficient cause shown at any time before judgment, must be allowed to defend the action; and the defendant against whom publication is ordered, or his representatives, may, in like manner, upon good cause shown, be allowed to defend after judgment, or at any time within one 49
year after notice thereof, and within seven years after its rendition, on such terms as may be just; and if the defence be successful, and the judgment, or any part thereof, has been collected or otherwise enforced, such restitution may thereupon be compelled as the Court directs; but the title to property sold under such judgment to a purchaser in good faith, shall not be affected. And in all cases where publication is made, the complaint must be first filed, and the summons, as published, must state the time and place of such filing.

In actions for the partition of real estate, or for foreclosure of mortgages on real estate, if any party or parties, having any interest in, or lien upon, such mortgaged premises are unknown to the plaintiff, and the residence of such party or parties cannot, with reasonable diligence 50
be ascertained by him, and such fact shall be made to appear by affidavit to the Court, a Judge, Clerk of the Court, Master or Judge of Probate, where the trial is to be had, such Court, Judge, Clerk, Master or Judge of Probate, shall grant an order that the summons be served on such unknown party or parties by publishing the same, for six weeks, once a week, in a newspaper printed in the county where the premises are situated, which publication shall be equivalent to a personal service on such unknown party or parties.

SECTION 158. In the cases mentioned in Section 156, the service of the summons shall be deemed *complete* at the expiration of the time prescribed by the order for publication.

SECTION 160. From the time of the service of the summons in a 51
civil action, or the allowance of a provisional remedy, the Court is

deemed to have acquired jurisdiction, and to have control of all subsequent proceedings. A voluntary appearance of a defendant is equivalent to a personal service of the summons upon him.

The mere reading of these sections makes it too plain for argument, that the filing of the complaint and notice of pendency of action and placing the process in the hands of the sheriff in a cause *in rem*, especially when a receiver is
52 prayed, gave the Court complete control of the controversy and the right to the subject matter.

Sections 158 and 160, cited by appellant, simply mean that the Court has acquired such jurisdiction as to make any final adjudication upon the rights of parties only after *complete* service. But the right to take possession of the *res*, and make any provisional order concerning the same, is vested in the Court as soon as the complaint or bill *in rem* is filed, although the defendant has been served, neither personally nor by publication.

53 *Heidritter vs. Elizabeth Oil Cloth Co.*, 112 U. S., 291.

The case standing thus, the counsel for Caroline Carson, in their eager haste to defeat the State Court jurisdiction, conceived the plan of having a receiver appointed of the premises sought to be foreclosed.

Ex parte application, on 7th Sept., 1886, after all the foregoing, is made to the Circuit Judge for leave to file a supplemental bill to the original bill for a money decree, which,
54 as we have just shown, stood dismissed as of course.

The province of a supplemental bill is simply to remedy defects in the original bill, happening *after* it was filed.

Equity Rules, 57.

If it is desired to make new parties, who held their interests at the time the original bill was filed, it can only be done by *amendment*.

The paper offered as a supplemental bill entirely changed the whole character of the original bill. It attempted to
55 make new parties, viz: the representatives of Hyatt, who held their interests when the original bill was filed, and

changed a prayer for personal relief against McBurney into a bill *in rem* to remove a cloud upon title.

The rule in equity, as to supplemental bills, is as follows:

RULE 57. SUPPLEMENTAL BILL, WHEN PROPER: Whenever any suit in equity shall become defective from any event happening after the filing of the bill, (as, for example, by change of interest in the parties,) or for any other reason, a supplemental bill or a bill in the nature of a supplemental bill may be necessary to be filed in the cause, leave to 56
file the same may be granted by any Judge of the Court on any rule day, upon proper cause shown, and due notice to the other party. And if leave is granted to file such supplemental bill, the defendant shall demur, plead or answer thereto on the next succeeding rule day after the supplemental bill is filed in the clerk's office, unless some other time shall be assigned by the Judge of the Court.

These rules have been held to have the force of a Statute and cannot be ignored by any Circuit Court at its will.

Revised Stats., Sect. 917.
Ex parte Poultney, 12 Peters, 472.
Ex parte Whitney, 13 Peters, 404. 57

Notwithstanding all this the Circuit Judge at Chambers, on an *ex parte* application without a breath of notice to McBurney, and McGahan, made an order allowing the supplemental bill to be filed, when in point of law their demurrer to the bill stood at the threshold preventing all action until it had been decided, and under the rule the original bill stood dismissed—and not only allowed the supplemental bill to be filed but at the same time appointed a Receiver, without notice, under this supplemental bill, no receiver having 58
been prayed in the original bill.

The conception of a supplemental bill in equity pleading has always been, that the original bill being not defective at time of filing; the supplemental bill was to cure *after* defects. The theory of the present supplemental bill is that the original bill was wholly defective at the time of filing and the supplemental bill was to cure defects that always existed.

Upon the defects of this particular order therefore it is apparent that the sole object of the counsel for Mrs. Carson 59
was, to defeat the State Court's Jurisdiction, by inducing the

United States Court to enter into a race for possession, entirely independent of the orderly rules of procedure, and that the U. S. Court has thereby obtained a possession based on an order wholly invalid and null.

The true rule is that the State Court having first taken the jurisdiction of the controversy and the subject matter by the filing of a complaint *in rem* praying a receiver, and the
60 issuance of its process; that to permit another Court upon an after instituted proceeding to wrest away jurisdiction by snapping up possession would lead to the most unseemly and indecent embroilment between the courts.

Heidritter v. Elizabeth Oil Co., 112 U. S., *supra.*

In the supplemental bill the complainant, Mrs. Carson, attempts to avoid the fatal objection that her original bill was dismissed by an *ex parte* allegation that such original bill had been by consent allowed to lie over.

61 No evidence was offered on this point at the hearing and whatever the effect of the *responsive* allegation of an *answer* may be as evidence. No Court of Equity has yet accorded such weight to the unsubstantiated averments of a bill.

4

That the bond and mortgage sued on are void under the laws of the United States.

The first objection to this ground as urged before the Circuit Court was and is that it is too vague and indefinite to
62 furnish any ground at all.

As we said before the case made for a removal must be made on the record and petition in the State Court. That is; the State Court must have before it a case calling on it to relinquish its jurisdiction. No papers or pleadings afterwards filed in the United States Court, and not before the State Court, can effect the question of removal.

Is a mere allegation of this kind sufficient? It has been decided not.

Goldwashing and Water Co. v. Keyes, 96 U. S., 203.

63 *Gibbes v. Crandall*, 119 U. S., p. — (Sup. Ct. Rep., vol. 7, p. 497.)

If the allegation be held sufficient, as matter of pleading, it does not have the effect of removing the case, unless upon the investigation, the United States Circuit Court shall find that a suit or controversy properly within its jurisdiction was really and substantially involved.

Upon the investigation the Circuit Court found that no controversy within its jurisdiction was involved.

The argument of the appellants claims that such contro- 64
versy was involved, because the bond held by Dunham was a void bond under the following Act of Congress:

Act of 13th July, 1861, § 5 (U. S. Vol. 12, p. 217).

But where is the Federal question? No one denies—all admit—the counsel for Dunham admits, that the bond is void if in contravention of this Statute, and if Hyatt is within its scope. The State Court is bound so to decide. The counsel for Mrs. Carson have again confounded matters of *defence* with matters of *removal*. A bond is sued on. The 65
defence is that the bond is invalid. Every one admits that Congress had a right to declare such bonds invalid. How then can any Federal question arise until it has been made to appear that such bond is invalid, and the State Court has refused to give effect to the Statute of Congress. Is this Court again to assume in advance that the State Court will contravene the rules of law?

There is no question here about the construction of any Act of Congress. All agree upon the construction. The only question that can arise is, as a matter of *fact*, upon the 66
testimony to be given when the case comes to a trial on the merits; does the bond in question come within the provision of the Act of Congress?

There can be here no possibility of a Federal question, unless this Court shall decide that, under the Act of March, 1875, all cases that were here cognizable by appeal from the State Supreme Court, because it *had* decided in violation of some United States Statutory or Constitutional provision, are now removable to, and cognizable by, the United States Circuit Court in their inception, because the State Court 67
may so decide. In other words, any party has his election

either to remove such suits at once to the Circuit Court, or else to remain in the State Courts, and finally to appeal to this Court. As yet it is *res non adjudicata*.

Again, assuming that the Circuit Court has the right to pre-suppose the action of the State Court and take jurisdiction by removal, if, on the investigation and the testimony, it appear that the bond in this case was really made within
68 the purview of the Statutes referred to, and therefore void. The mere allegation is not enough. That allegation might be made as to any bond. It must be made to appear that the bond is really void under the terms of this Statute.

Gibbes v. Crandall, 119 U S., p. (filed 24th January, 1887). Sup. Ct. Rep., 497.

The Statute is as follows:

15. Whereas, The President, in pursuance of the provisions of the second section of the Act entitled "An Act to provide for calling forth
69 the militia to execute the laws of the Union, suppress insurrections and repel invasions, and to repeal the Act now in force for that purpose," approved February 28th, 1795, shall have called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when such insurgents claim to act under the authority of any State, or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or Sates, or in the part or parts thereof in which said combination exists, nor such insurrection suppressed by said State or States, then, and in such case, it may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any section or part thereof, where such insurrec-
70 tion exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from said State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying persons to or from such State or section, be forfeited to the United States.

The facts are given in the brief as follows (Brief p. 40, fo. 117–118):

71 That Edmund Hvatt, one of the firm of Hyatt, McBurney & Co., lived in New York for many years before the late war; that sometime in the

early or middle part of 1861 he came to Charleston on a visit, leaving his family in New York, and intending to wind up his affairs and return, but that the closing up of the lines and the blockade prevented him. The bond mentioned in the complaint was given to Edmund Hyatt in part payment of his interest in the firm. He returned to New York as soon as he could, and there remained until his death.

The non-intercourse Act was passed 13th July, 1861.

This court has decided that it did not become operative 72
until the President's proclamation of 16th August, 1861.

Matthew v. McStea, 91 U. S., 7.

But Hyatt had already arrived in Charleston when the proclamation was made, and did not come there against its inhibition.

The lines were thereupon closed, and he could not return.

Furthermore, the Statute forbids *commercial intercourse, i. e*, 73
trading or any act where by gain might accrue to the person trading, or benefit to the person within the insurgent territory. Hyatt did nothing of the kind. He went to save his property, which was in peril. Went before he was forbidden. And so far from *commercial intercourse* or trading, broke off his commercial relations with his copartners, and only took from them his own property, viz: their bond or acknowledgment of their debt to him. Doubtless one reason of his course was to save for the Northern creditors that which was their due.

The Act of 17th July, 1862, relied upon in the Brief of ar- 74
gument of Mr. Lowndes needs no further reference to, save to say that its application is by its terms strictly limited to persons proved as aiding and abetting a rebellion.

Hyatt at the time was in South Carolina, but is not shown to have either aided or abetted any rebellion.

But all this discussion as to the effect of these two Statutes upon Hyatt's bond is wholly irrelevent. Hyatt (even had he been within the scope of any of these statutes) was included in the several amnesties proclaimed after the war—particu- 75
larly that of 25th December, 1868, and the amnesty Acts of

Congress—and his rights were restored absolutely and in every respect.

Armstrong v. United States, 13 Wall, 154.
Osborn v. United States, 91 U. S., 474.
Knote v. United States, 95 U. S., 149.

76 5

That Caroline Carson holds title to Dean Hall under a title from the U. S. Marshal made in pursuance of a decree of this Court.

This ground has been fully treated in the argument already. A right based on a Marshal's title can be no higher than the judgment which authorized it.

77 The second main ground for removal is on the score of citizenship.

1.

That Dunham is not a citizen of Massachusetts but of South Carolina, and, therefore, a citizen of a different State from Caroline Carson.

This was a question of fact to be determined by the Circuit Court. On the trial the Court determined that the
78 burden lay upon Caroline Carson, as the actor seeking to deprive the State Court of jurisdiction upon a strict statutory proceeding, to prove the allegations of her petition that Dunham was not a citizen of Massachusetts.

This on the authority of the following cases:

Heath v. Austin, 12 Blatch., 320.
Copeland v. Memphis, 3 Woods., 651.

The appellant assigns this as error, but it is immaterial for Dunham himself introduced evidence that established
79 positively and affirmatively that he was a citizen of Massachusetts. (Brief, ff. 118–119, p. 40.)

2.

That Mary A. Hyatt, a citizen of New York, was the real and true owner of the mortgage in controversy, and that it had been only collusively assigned to Dunham, the nominal holder, in order to defeat the jurisdiction of the United States Court.

This ground was abandoned at the hearing and no evi- 80
dence offered, and is disposed of by the following cases:

Provident Savings Society v. Ford, 114 U. S., 635.
Oakley v. Goodman, 118 U. S., 43.

Finally, in the five last pages of appellant's Brief of argument two grounds are taken as reasons for reversing the judgment of the Circuit Court. The first is, that this is a mere extension of the previous litigation begun in 1866 by Caroline Carson, and that Dunham is bound by the result of that litigation. 81

In 19 Wall, p. 94, this Court decided that Hyatt was no party—not bound—and could file his bill and assert his rights whenever minded, and that Mrs. Carson proceeded without him at her peril. In 99 U. S., p. 568, this decision was affirmed.

No judgment has ever been made against Hyatt, or his legatees or assignees, and they stand to-day as free to assert their rights as when the decision in 19 Wall, 94, was filed. How, then, by any rule of fairness or law, can either Dunham or Hyatt be held to be barred or affected by 82
proceedings, to which neither they nor any privies of their's were parties, even by name, and how can this litigation, begun by Dunham, be said to be simply an extension of the litigation instituted by Mrs. Carson herself and long since ended?

The second ground is that Mrs. Carson was the daughter of Mr Petigru, an eminent lawyer, and as stated in argument, removed from her native State during the late war, not being in sympathy with it in its secession. If the inference sought to be drawn from these statements is correct, 83
viz: that Mrs. Carson is therefore the special protegé of the

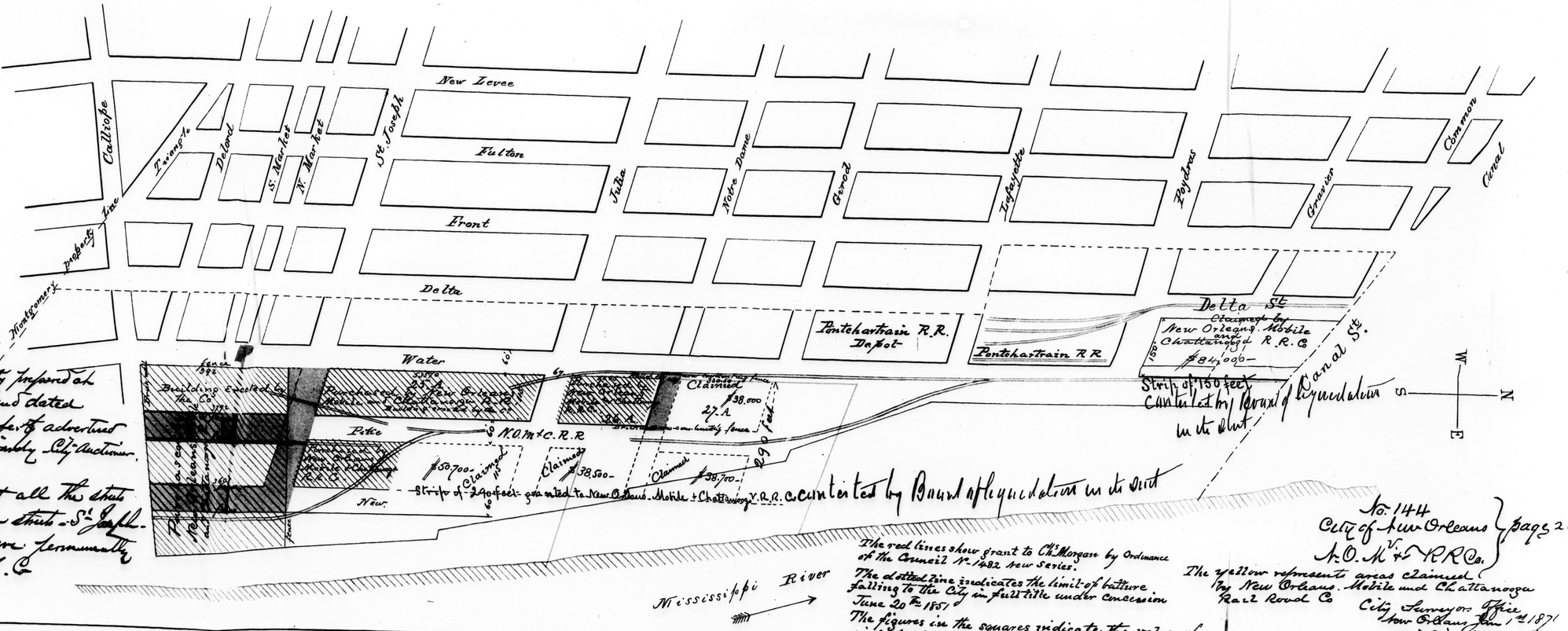
Court, in whose behalf all rules are to be relaxed, and that any action touching her person or property is one arising under the Constitution and laws of the United States, then, indeed, the counsel for Dunham admit that the judgment below should be reversed.

WM. E. EARLE,
MITCHELL & SMITH,
Counsel for Appellee.

84

No 986 Cur Reg.
La Rail Road Co.
v.
Whitney et al.
} p. 24.

a



Plans for Sale of property impanneled at City Surveyors Office and dated December 7th 1867 Property advertised for sale by C.C. Greenleaf City Auctioneer. 25th January 1868.

The plans represent all the streets (Colored red) as open streets - St Joseph and Notre Dame are permanently closed by the R. R. Co

The red lines show grant to Ch.s Morgan by Ordinance of the Council No. 1482 new series.

The dotted line indicates the limit of batture falling to the City in full title under Concession June 29th 1857

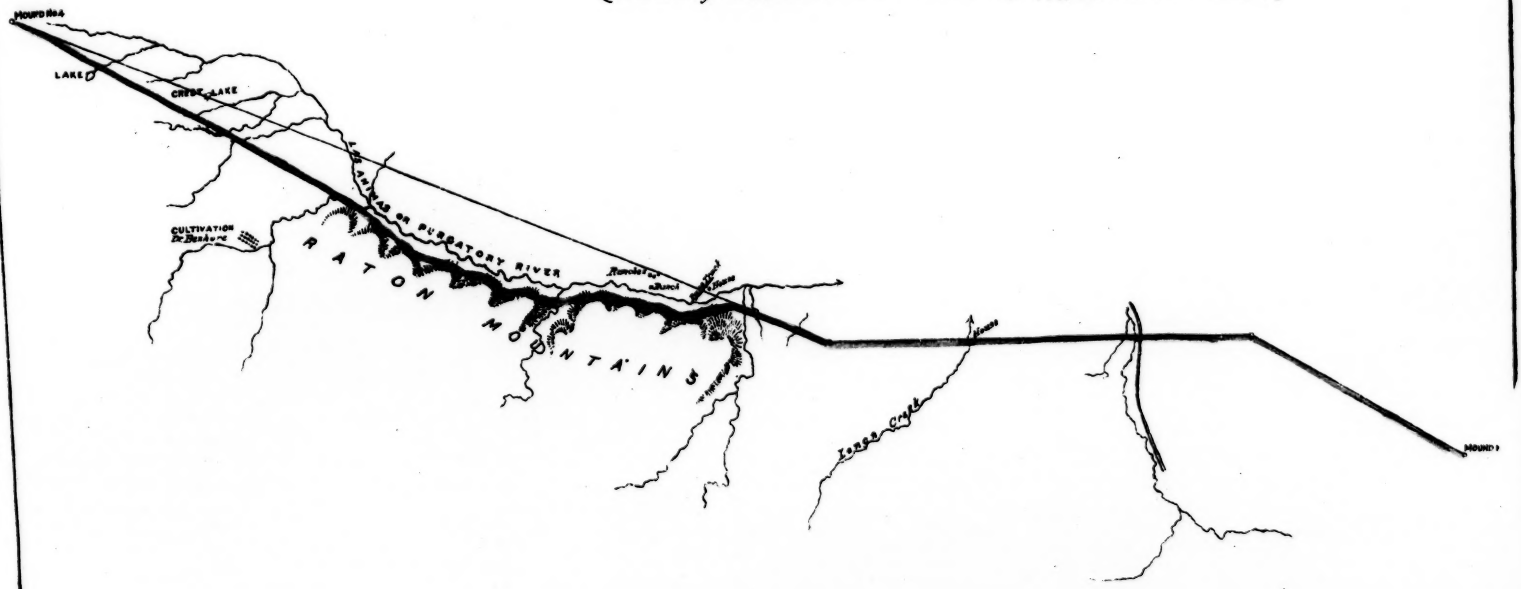
The figures in the squares indicate the value of said property at this date Jan 1st 1871.

No. 144
City of New Orleans
vs.
N.O. M.& C. R.R.Co.
} pages 287 - K.

The yellow represents areas claimed by New Orleans, Mobile and Chattanooga Rail Road Co

City Surveyors Office
New Orleans Jan 1st 1871
Signed) W. H. Bell
City Surveyor

(This Tracing accompanies Commissioners Letter of Sep. 1/77, No. 1431, to Surveyor General)



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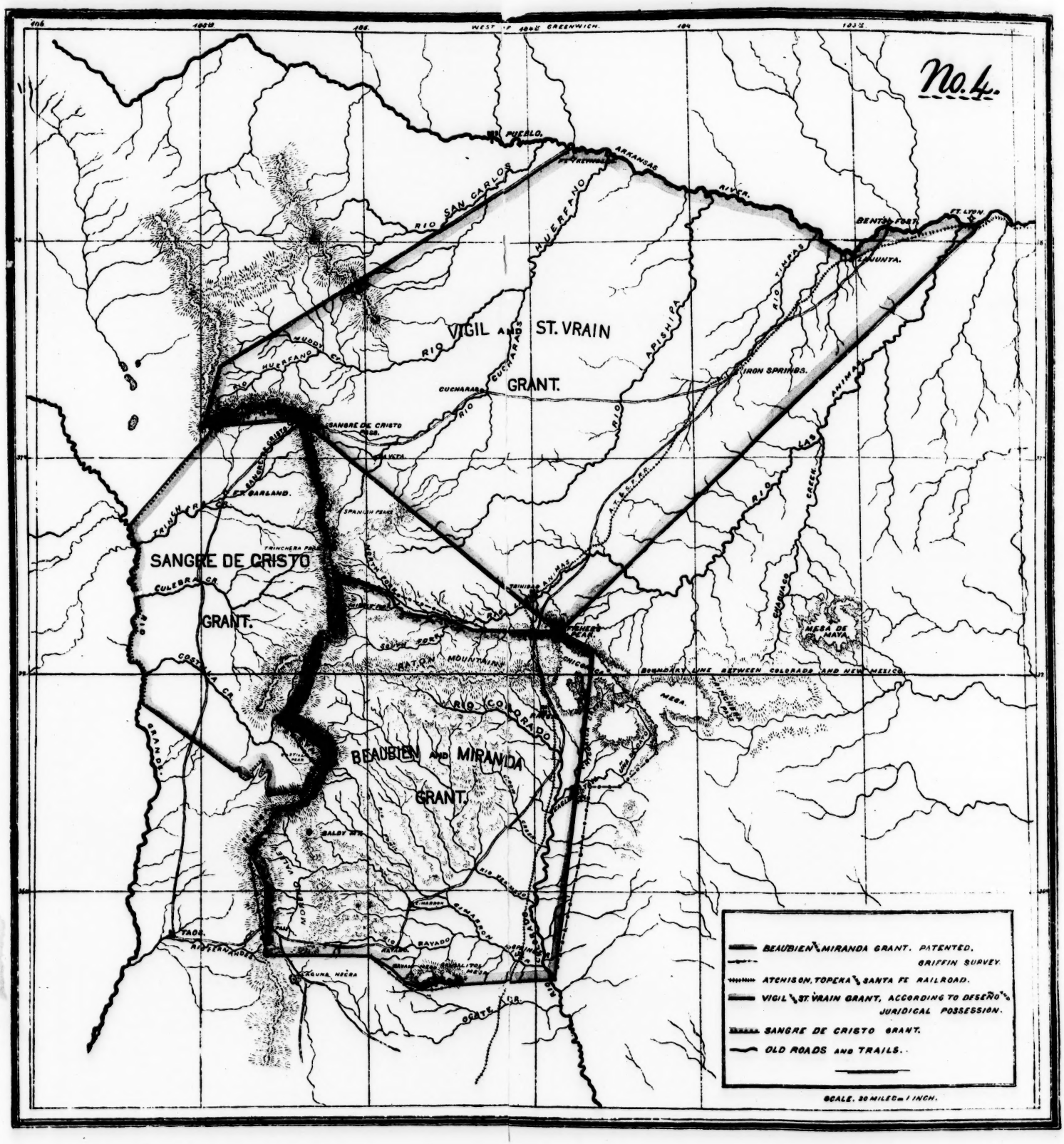
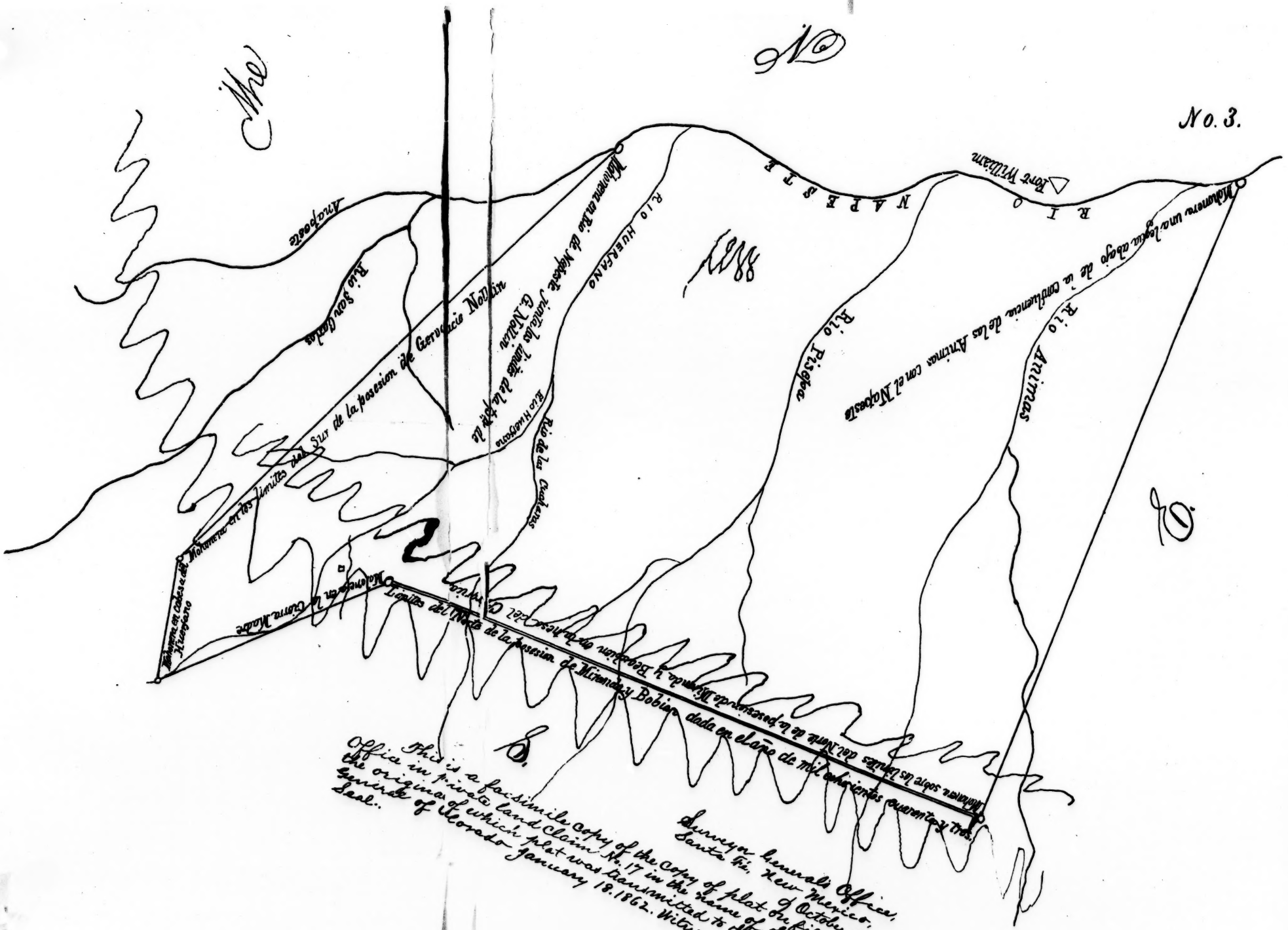
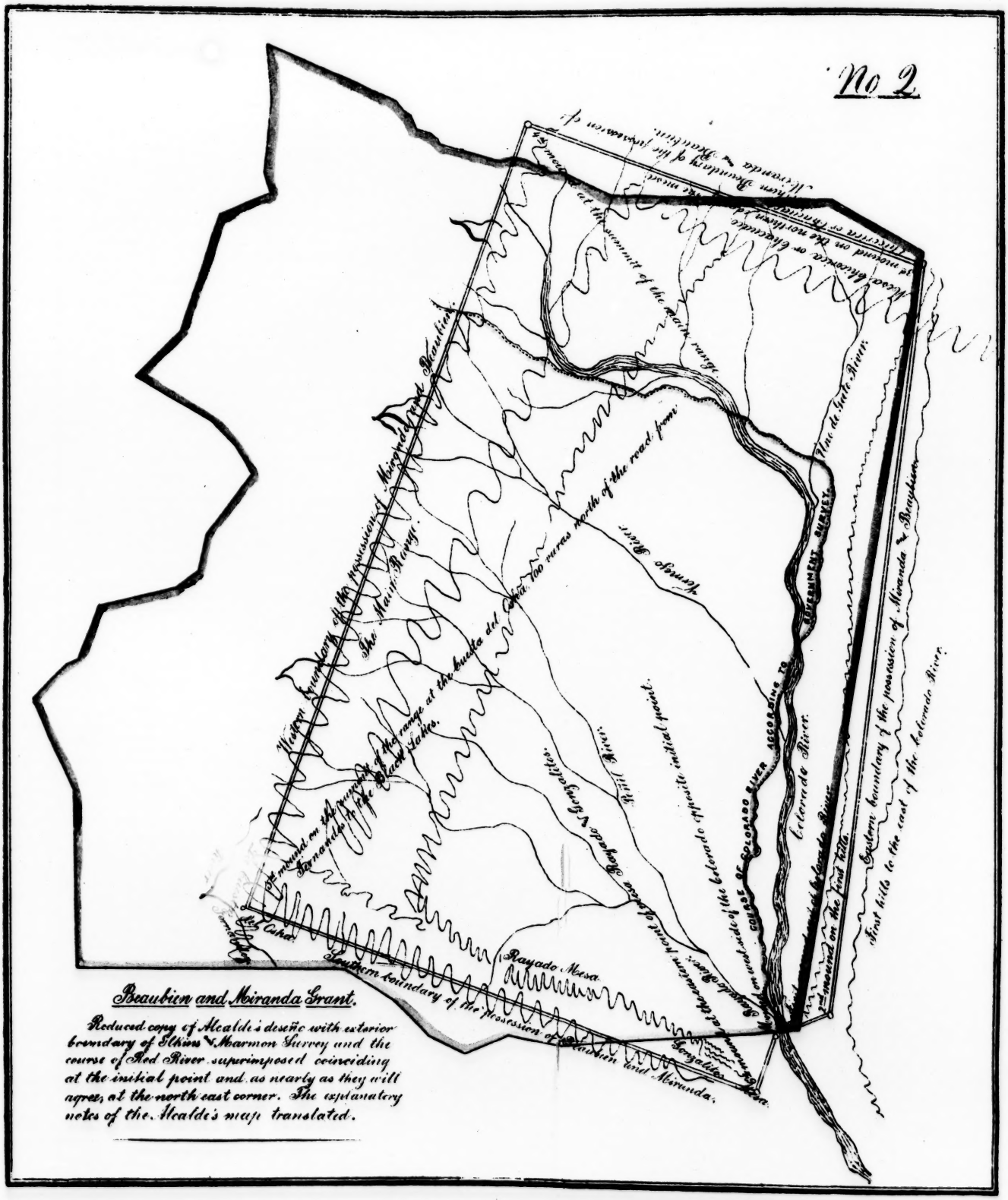

No. 4.
VIGIL AND ST. VRAIN GRANT.
SANGRE DE CRISTO GRANT.
BEAUBIEN AND MIRANDA GRANT.
PUEBLO.
ARKANSAS RIVER.
RIO SAN CARLOS
HUERFANO
RIO CUCHARAS
RIO APISHIPA
RIO TIMPAS
RIO ANIMAS
BENTS FORT.
FT. LYON.
LA JUNTA.
IRON SPRINGS.
HUERFANO CR.
CUCHARAS
SANGRE DE CRISTO PASS.
LA VETA.
EX GARLAND.
TRINCHERA CR.
TRINCHERA PASS.
SPANISH PEAKS
CULEBRA CR.
TRINIDAD
PURGATOIRE R.
RATON MOUNTAINS
SOUTH FORK
CHICO CR.
MESA DE MAYA
BOUNDARY LINE BETWEEN COLORADO AND NEW MEXICO.
COSTILLA CR.
RIO COLORADO
MESA
SIERRA GRANDE
BALDY MTN.
RIO HONDO
RIO VALDEZ
EL MADRON
RAYADO
TAOS.
RANCHO DE TAOS
LAGUNA NEGRA
GRATE CR.
BEAUBIEN & MIRANDA GRANT. PATENTED.
GRIFFIN SURVEY.
ATCHISON, TOPEKA & SANTA FE RAILROAD.
VIGIL & ST. VRAIN GRANT, ACCORDING TO DESEÑO & JURIDICAL POSSESSION.
SANGRE DE CRISTO GRANT.
OLD ROADS AND TRAILS.
SCALE. 20 MILES = 1 INCH.

No. 3.

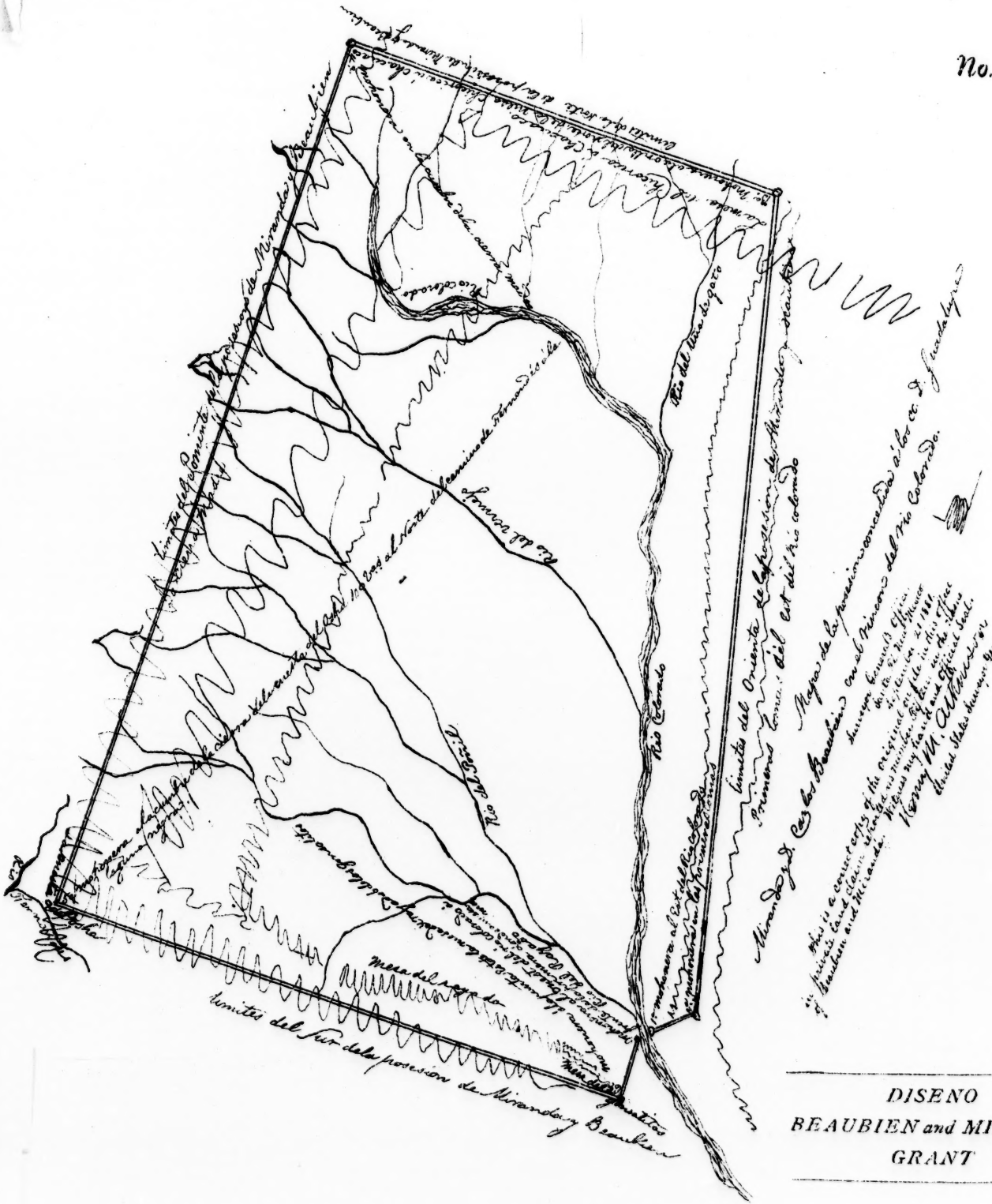

Rio Napestle
Fort William
Rio Huerfano
Rio Purgatoire
Rio Arkansas
Rio San Carlos
Rio Hatchet
Rio de las Animas
Rio Fisher
Arroyo
Arroyo
Arroyo



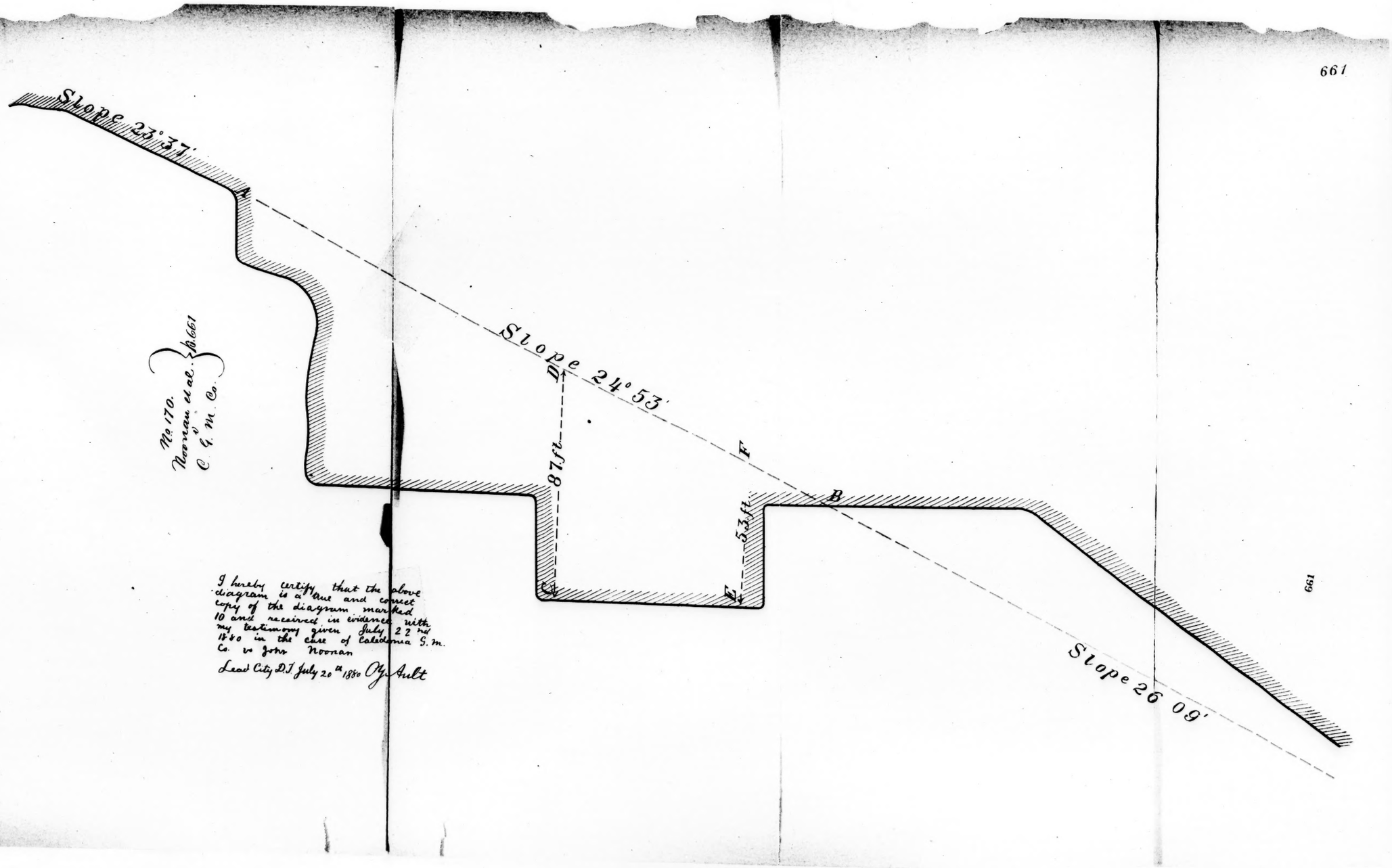
Beaubien and Miranda Grant.

Reduced copy of Alcalde's diseño with exterior boundary of Elkins & Marmon Survey and the course of Red River superimposed coinciding at the initial point and as nearly as they will agree, at the north east corner. The explanatory notes of the Alcalde's map translated.

No. 1.

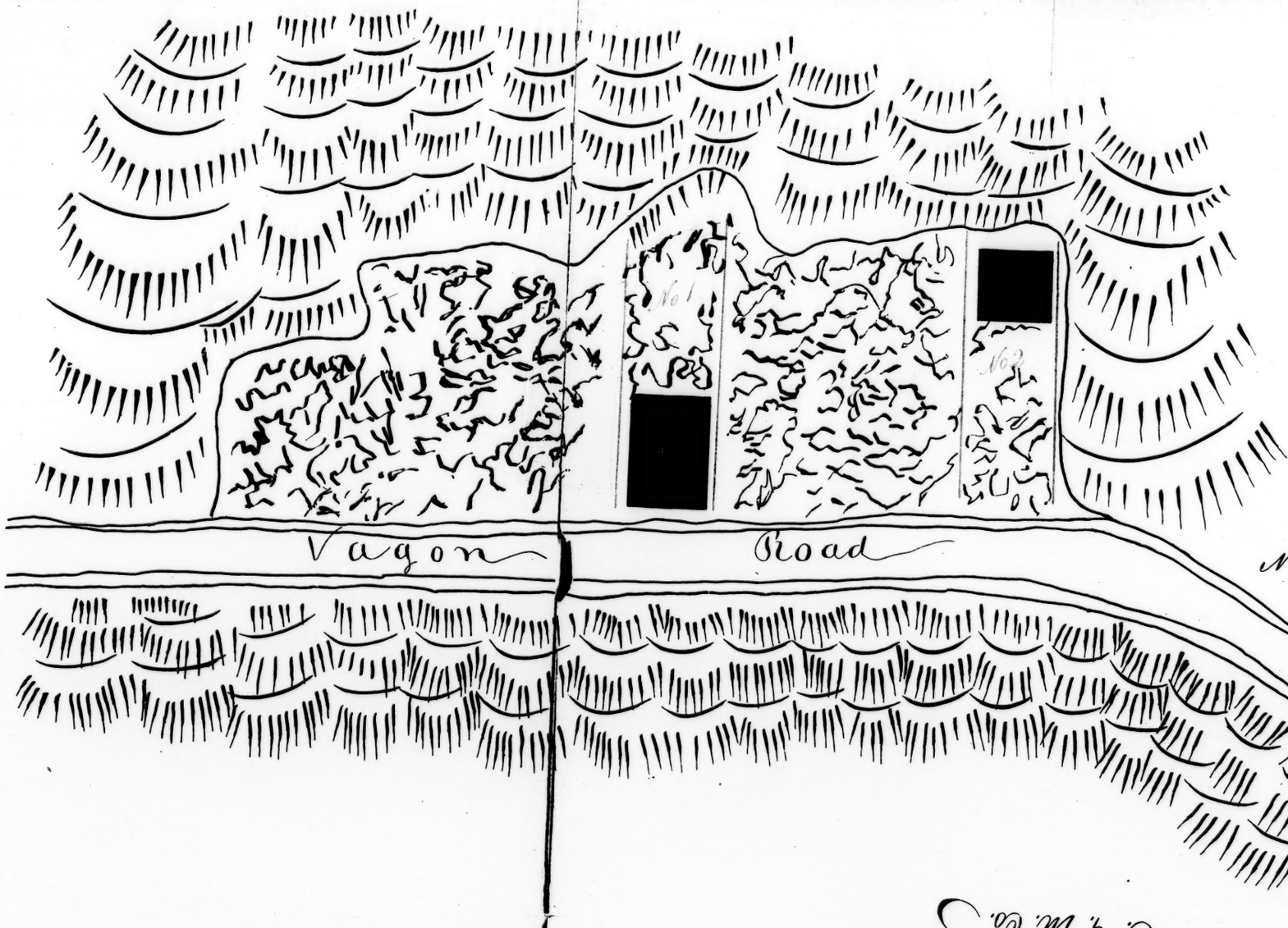


DISENO
BEAUBIEN and MIRANDA
GRANT


Slope 23° 37'
A
No 170
Noonan et al.
v.
C. C. M. Co.
661
Slope 24° 53'
D
87 ft.
C
F
B
53 ft.
E
Slope 26 09'
I hereby certify that the above diagram is a true and correct copy of the diagram marked 10 and received in evidence with my testimony given July 22nd 1880 in the case of Caledonia S. M. Co. vs John Noonan
Lead City D.T. July 20th 1880 Oj. Ault

661

662



Nos 1 & 2
Cuts seen by Thezum
Boatwright Coleman
No 3 Excavation by Mahan

Prospecting
Shaft 2 ft deep

Prospecting
Shaft 6 ft deep

Prospecting
Cuts 2 ft deep

No. 170.
Memorandum.
p. 662.
A.
C. & W. Co.

I hereby Certify that
the above diagram is
a true and correct
copy of the diagram
maps & received
in evidence with my
Testimony given July 22nd
1880 in the case of Caledonia
G. M. Co. vs John Noonan
Lead City DT
July 23rd 1880 R Gehrett

Scale 10 ft to an inch.